WORKING TOWARDS EQUALITY

THE DISCUSSION PAPER ON EMPLOYMENT EQUITY LEGISLATION

Minister of
Citizenship
Ontario

Office of the
Employment Equity Commissioner

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WORKING TOWARDS EQUALITY

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November, 1991

Dear Friend,

Employment Equity is about this Province's most valuable resource: its PEOPLE. It is about a new vision of Ontario where every workplace is an environment of fairness and social justice for all people and where workers can participate in workplaces to the best of their abilities.

By utilizing all the diverse skills, talents and experiences of all the people in Ontario, employment equity will play a vital role in Ontario's economic renewal. A trained, skilled and adaptable labour force is key to the economic prosperity of this province. Employment equity will enable Ontario to be well-positioned for the economic challenges of the future.

Ontario's NDP Government is committed to mandatory employment equity legislation. The release of this discussion paper, "Working Towards Equality," and the launch of the formal consultation process is one major step forward.

To maximize the economic and social benefits of employment equity, we must ensure that the proposed legislation will be fair, practical and effective. The consultation process will be an opportunity for all sectors of our society to participate and provide their expertise.

As the lead Minister responsible for employment equity, I encourage your input and involvement in this crucial process of developing implementation models and building consensus. Together we will put Ontario back to work in a fair and equitable manner.

Elaine Ziemba

Elaine Ziemba
Minister

Ontario

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Commissioner of Employment Equity
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Toronto, Ontario
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Your File

Our File

November 1991

Dear Friend,

Some very important decisions have to be made about Ontario's future. The Government has decided that it will introduce Employment equity legislation in order to move forward in the quest for equality for all of Ontario's people. Work has already been done on legislated employment equity. In 1989, provincial consultations were held regarding a comprehensive approach to employment equity. Many groups have conducted research projects or studies on employment equity issues. There are also existing laws that recognize and support the need for programs that address equality in employment.

Ontario cannot afford to wait any longer before addressing long standing problems of discrimination in the workplace, particularly those of four groups--Aboriginal Peoples, persons with disabilities, racial minorities and women.

Ontario can certainly be proud of its achievements in adopting anti-discrimination laws in housing, employment practices and public services. This first generation of legal protection reflects not only the value our society has placed on universal, fundamental human rights, but also the importance we have placed on the protection of those rights. However, these efforts have not succeeded in uprooting ingrained biases in employment practices. Today, there is a growing awareness that systemic and systematic exclusion of certain groups of people in our province carries an economic as well as social price for us all.

While almost everyone agrees on the principles of employment equity, fair representation in the workplace and removal of barriers in employment, the challenge which faces us is how to achieve these goals. The benefits of full and equal participation of all workers can renew and strengthen the economy of this province. The Government has requested that I hold consultations on how best to implement employment equity.

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In these consultations, we, together, will be looking at many issues to be resolved if the employment equity legislation is to be truly effective and workable. Some of these issues are complex and technical. Some may be controversial. All of them need careful thought and vigorous discussion.

Ontario holds many communities--urban and rural, small and large. It is geographically, culturally, racially, and linguistically diverse. Its workplaces range from single person firms to complex multi-national corporations. Each of these factors and others will impact on employment equity legislation and its successful implementation. It is vital that all interested persons and groups have an opportunity to contribute their ideas and recommendations.

As part of the consultation, I will be receiving and reviewing briefs, organizing community meetings, and holding public presentations in different communities. Information about dates, times, places and participation is available by calling or writing the Office of the Employment Equity Commissioner.

I look forward to hearing from you.

Juanita Westmoreland-Traoré

Juanita Westmoreland-Traoré
Commissioner of Employment Equity

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EXECUTIVE SUMMARY

In the Speech from the Throne in November 1990, the Government of Ontario promised to introduce employment equity legislation and to consult with the people of Ontario about the implementation of the legislation. In March 1991, the Government appointed the province's first Employment Equity Commissioner to conduct the consultations and to advise Government throughout the legislative process.

In fulfilling her mandate, the Commissioner will be receiving and reviewing briefs and holding public meetings in communities throughout Ontario. In order to create, implement and enforce legislation that is fair, workable and practical, the input and co-operation of many employers, unions, designated group members and other interested persons is vital.

This paper provides a framework to facilitate consultation and is based on four major decisions made by this Government in moving towards employment equity. The four decisions are:

- **Employment equity will be legislated;**
- **Employment equity legislation will designate four groups:**

  Aboriginal Peoples
  Persons with disabilities
  Racial Minorities
  Women

- **Employment equity will cover the public, broader public and private sectors;**

- **Employment equity will be mandatory.**

The **Introduction** outlines the rationale for employment equity in the province, and includes an examination of: changing economic realities and a labour force which has to be able to respond effectively to these changes, profiles of designated groups, activities which have led up to the current consultation process, employment equity initiatives in other jurisdictions, and the Government's commitments in moving forward on employment equity.

The section **Employment Equity Issues For Consultation** identifies key implementation, enforcement and structural issues for discussion.

Recognizing that there is a range of approaches to the issues, the Government has suggested certain approaches on some issues to facilitate discussion at the present time. The final decision on the issues will be made after the completion of the consultation process.

The four Government decisions are discussed under the following topics:

I. Employment Equity Will Be Legislated:

The Employment Equity Plan: The plan as a tool to achieve employment equity goals; components which should be included in a plan such as numerical goals and timetables, measures to increase the participation of designated group members in the workplace; the issue of submitting plans to the future Commission; the issue of establishing standards or guidelines for goals; which components should be made mandatory.

Collecting and Reporting Data: The collecting and reporting of data in order to measure change across time, location, and organizations while keeping reporting requirements as minimal as possible; the kinds of data which could be collected; the issue of what data should be collected, how and how often it should be collected and reported; the issue of standardization and compatibility with other jurisdictions.

Participation of Workers in Employment Equity Planning: The role of workers in developing, implementing, monitoring employment equity plans; different formats for participation in unionized workplaces including negotiation and consultation; the joint management-worker committee as a mechanism to facilitate participation of non-unionized workers in employment equity planning.

II. Employment Equity Will Cover Four Designated Groups:

Employment Equity Measures: Measures as tools to assist designated groups in achieving employment equity. Addressed are four types of measures: barrier elimination, job accommodation, positive measures, and supportive measures; how measures can respond to the different needs of designated group members, and address the persisting disadvantages of these groups; how measures can eliminate barriers to and in employment, remedy effects of past discrimination, and enhance the quality of the work environment to benefit all workers.

III. Employment Equity Will Cover Three Sectors:

Employers Covered By Employment Equity: Coverage of employers in the public, broader public and private sectors in order to benefit as many workers possible; ways of determining which employers should be covered by the proposed legislation, including size and annual payroll; consideration of the individual circumstances of workplaces, including resources to implement employment equity.

IV. Employment Equity Will Be Mandatory:

Compliance And Enforcement: Different ways of ensuring compliance with the proposed legislation, the benefits/drawbacks of these approaches; consideration of the role of incentives and the use of sanctions.

The Timing of the Proposed Legislation: Determining time- lines for compliance with the proposed legislation including: the need for immediate steps to correct discriminatory practices and their effects; the need for employers to have sufficient time to gather necessary information, prepare the climate of their establishments, adjust human resources systems and modify collective agreements where appropriate; the issue of accommodating for diverse resources and experiences of workplaces in implementing employment equity.

The Future Employment Equity Commission: The importance of a strong, accessible and independent body that will consult, educate, monitor and enforce employment equity legislation; the roles of the Commission and its relationship with other equity-related government bodies and initiatives; the question of how to ensure participation by designated groups, employers, unions, interested parties, and advocacy groups in the work of the Commission.

A definition of employment equity, an outline of some current employment equity programs, some relevant legislation, and a participant reply form, are supplementary materials provided in the Appendices.

The Government would like input on the following questions:

The Employment Equity Plan

- What should be in an employment equity plan?
- Should components be mandatory? If so, which ones?
- Should the Commission establish standards for each of the plan's components?
- Should plans be submitted to the Commission? If so, why? If not, why not?

Collecting and Reporting Data

- Should data collection and reporting be standardized and compatible with other jurisdictions?
- How should data be gathered and reported?
- What kind of workforce data should be collected?
- How often should data be reported?
- How can "paper work" be reduced to a minimum and still allow effective monitoring and evaluation?
- What definition(s) do you prefer for the designated group(s)?

In addition, for designated group members:

- In what way would you prefer to be identified as a member of a designated group: self-identification, identification by another (supervisor), or a combination of both? Based on your preference, what supports should be in place to implement this method?
- What is your opinion on the further breakdown of designated groups by sub-categories?

Workers' Participation in Employment Equity Planning

- Should joint employment equity committees be formed?
- What should be the relationship between collective bargaining and employment equity?
- How will employment equity planning take place in workplaces with multiple bargaining units?
- What kind of mechanism should be in place to respond to a failure to negotiate an employment equity plan?
- How can non-unionized workers best participate in developing, implementing and monitoring the employment equity plan?
- What resources would be needed for non-unionized workers?

Employment Equity Measures

- What successes and difficulties have you experienced in implementing or benefitting from barrier elimination measures, job accommodation measures, positive measures, and supportive measures?

- What kinds of educational processes and resources would be required to implement these measures?

- What government services in education, employment and training are needed to support employment equity?

- How can employment-related services and employment equity initiatives be co-ordinated?

In addition, for designated group members:

- What are your priorities for:

  - barrier elimination measures
  - job accommodation measures
  - positive measures
  - supportive measures

Employers Covered by Employment Equity Legislation

- Which employers in the public sector, broader public sector and private sector should be covered by the proposed legislation?

- Should there be modified requirements for smaller businesses? If so, what should they be?

- Should coverage be based on the number of workers (size of employer) or on the size of payroll?

Compliance and Enforcement

- What approaches should be taken in enforcing the proposed legislation?
- What incentives should be used to encourage compliance with employment equity legislation?
- What sanctions and remedies should be used to ensure compliance, or to address specific violations of the legislation?
- What body should ensure compliance and impose remedies? Should a specialized tribunal be established? What procedures should be involved? What powers should the body have? Should the courts have a role?

The Timing of the Proposed Legislation

- What time-lines should be set for compliance with the proposed legislation?
- Should there be a phase-in period?

The Future Employment Equity Commission

- What is an effective structure to implement legislated employment equity?
- What kind of relationship should the future Commission have with other equity-related government bodies and initiatives?
- How would designated groups, advocacy groups and interested parties participate in the work of the Commission?

Full discussion of these and related issues can contribute to a greater understanding of employment equity and its benefits for designated groups, workers, unions, business, and the economy of our province. More importantly, consultations can promote dialogue and co-operation between the Government and the people of Ontario.

A. Why Employment Equity Now?

1. Moving Towards Employment Equity

As part of its commitment to equality and human rights, the Government of Ontario will be introducing and implementing employment equity legislation.

In the Speech from the Throne, November 20, 1990, the Government made the following commitment:

> "We cannot afford to lose the skills and abilities of Ontario's population because of discrimination. My government is fully committed to both employment equity and pay equity."

It was further stated that:

> "After consultation, we will introduce employment equity legislation. We are confident the Ontario economy can provide equity for its citizens, while ensuring a fair level of profitability for its business."

Employment equity is an important part of the Government's strategy to promote and sustain economic renewal. Employment equity can improve services and the way they are delivered to meet the needs of a diverse population. Employment equity also helps businesses adapt their products and services for new markets in Canada.

The Government recognizes that there are many barriers which prevent full participation in the workplace for Aboriginal Peoples, persons with disabilities, racial minorities, and women. These groups have been unfairly limited by long-standing policies and practices which, whether intentional or not, have had a discriminatory impact.

As the workforce becomes more diverse in the business sector, innovative ideas about products, services and networking among business partners may help the private sector to position itself advantageously in the global market.

Employment equity promotes the maximum use of human resources by taking advantage of all skills, abilities and experiences. It broadens the pool of candidates for recruitment and selection purposes, encourages workplaces to examine hiring and promotion decisions in a constructive way, and leads to unbiased employment practices and policies that will benefit both workers and employers. Employment equity is good business practice.

The benefits of employment equity are not limited to the four groups specifically designated. The development of recruitment and selection practices based on abilities will benefit all workers. A renewed focus on training and educational equity will also be advantageous to many people and their children. Measures to facilitate work and family responsibilities can be valuable for all workers.

Employment equity has already been legislated in Canada and is becoming part of the corporate culture. Since 1986, many companies in Ontario under federal and some municipal jurisdictions have been required to analyze their workforce, adopt employment equity plans and report their results. Provincially regulated companies in Ontario which have contracts with the Federal government fall under a contract compliance program. *The Police Services Act* has legislated employment equity for police forces in Ontario. Other provincial companies doing business with the City of Toronto are also required to adopt employment equity plans.

The Government recognizes that creating legislation that is effective, practical and workable will require cooperation from different communities, as well as sensitivity to demands already placed on employers by employment equity programs mandated by other jurisdictions.

2. Employment Equity and Economic Renewal

Changes in the labour force present new challenges. Sixty percent of the existing labour force is composed of Aboriginal Peoples, persons with disabilities, racial minorities, and women. Despite the fact that these workers make up such a large part of the labour force, they do not participate equally. They are often underemployed, earn less, and are segregated in marginal occupations, compared to other groups in the labour force. In the next decade, people from the four designated groups will make up a majority of those joining the working world. Moreover, fewer young workers will be entering the labour force, reflecting the decline in the birth rate following the post-War "baby boom." With the decrease in the traditional labour pool who were trained to meet the needs of existing workplaces and new industries, it makes good economic sense to maximize the use of all our existing and potential human resources.

The number and proportion of racial minorities will increase in the labour force. Immigration patterns have changed. While immigration used to be primarily from Europe, especially Britain, now over 60% of new immigrants to Ontario are racial minorities from Asia, Africa, the Caribbean and Latin America. More persons with disabilities are exercising their right to employment and entering the labour force. Also, because of the aging population trend, more workers already in the labour force who are currently not disabled may be facing some form of disability.

A trained, skilled and adaptable labour force is vital to the economic prosperity of this province. Employment equity means providing access to education and training for designated group members who otherwise would have been excluded because of their disability, race or gender. They continue to be discouraged from pursuing studies and skills in the fields identified by both the private sector and the government as essential to economic growth.

The need to keep up with and adapt to technological advances which are impacting on how business, unions, and organizations operate in a global market, requires a renewed focus on education and skills training in this province. Employment equity promotes these objectives and will facilitate the change process. The partnership between business, unions, and government must be strengthened.

The experiences and expertise of employers and unions in the area of human resources management and labour relations will contribute to the successful implementation of employment equity.

There is no doubt that businesses and governments are experiencing difficult economic times. Employment equity is critical for ensuring Ontario's current and future competitiveness. Those employers who make the most effective use of all their human resources are more likely to survive and prosper. Those who discriminate, whether intentionally or not, on the basis of race, sex, or disability when searching for employees, are not practising sound management procedures. Unions must do their part to foster the participation of designated group members among their membership at all levels of decision-making. It is highly wasteful not to take advantage of all the human potential available.

Often, when employment equity laws are contemplated, arguments about the state of the economy are raised. In 1984, the Royal Commission on Equality in Employment tabled its report on federal employment equity. Judge Abella commented:

> "The fact that the economy is anaemic does not justify a listless response to discrimination....The members of the four designated groups...have a right, whatever the economic conditions, to compete equally for their fair share of employment opportunities. As it is, the recession has only intensified their long penalization, in the form of under-training, unemployment, underemployment, and outright exclusion from the labour force (*Equality in Employment*, 1984)."

Members of designated groups can be said to live in a permanent recession, with higher rates of unemployment and underemployment. In realizing Ontario's commitment to the principles of social and economic justice, the hardships suffered disproportionately by designated group members in employment must be eliminated.

To maximize the economic and social benefits of employment equity, particularly during a recession, programs must be effectively co-ordinated, progress must be monitored, technical advice, educational and other resources, must be available. Non-compliance, as well as ineffective implementation of employment equity, will undermine the investment of resources in this area. It is with confidence in the benefits of employment equity, as well as with consideration for the difficult times we are facing, that this Government has made a commitment to mandatory employment equity.

3. Barriers to Equality

While many people may face setbacks at some point during their working lives, Aboriginal Peoples, persons with disabilities, racial minorities and women have historically been restricted by barriers to full participation in the workforce.

There are some differences in the way people behave today. There is a greater awareness of what is and is not socially acceptable behaviour. Many people no longer accept stereotyping or marginalizing individuals or groups. Racial slurs produce discomfort. Sexist remarks are not encouraged. Blatant discriminatory references to disabilities are more and more uncommon. Our recognition of the dignity and worth of all people, and our belief that all people have equal rights, are principles which we have confirmed in human rights legislation.

In Ontario, discrimination is against the law, prohibited by the *Human Rights Code, 1981*. Despite this kind of legislation, who gets hired, promoted or trained has not changed significantly. In part, this is because barriers to equality are not only the result of **direct discrimination.**

Barriers may be systemic. Many workplaces have policies or practices which may be harmless in their intent, but have a relatively greater impact on designated group members, and are not really necessary to meet the requirements of the job. An example of this kind of practice is word-of-mouth-hiring as the main recruitment practice. Word-of-mouth hiring may not reach designated group members who do not know anyone in the company. When employers look for a job candidate inside their workplaces, they would not be able to hire designated group workers who are not there in the first place. This is **systemic discrimination**. In this particular case, the discrimination may or may not be intentional. Racial, cultural, gender stereotypes, and stereotypes relating to disabilities may influence who will be specifically spoken to or recruited, or who will specifically be excluded. This kind of hiring practice may also happen simply because "that's the way things have always been done."

In either case, the result is that many workplaces still do not reflect the diversity of the people in the labour force. Existing legislation prohibits both direct and systemic discrimination. Traditionally, existing human rights commissions have not focused on eliminating systemic discrimination. Employment equity addresses the barriers produced by both forms of discrimination.

Evidence indicates that Aboriginal Peoples and persons with disabilities have been largely excluded from the workforce, while a majority of racial minorities and women are concentrated in low-paying jobs, with little opportunity for promotion and greater vulnerability to lay-off or closures. Barriers include restricted job opportunities and hitting the invisible barrier of the "glass ceiling". Because of systemic discrimination and other barriers, advancing through the "glass ceiling" into executive and senior management levels is impossible for most.

4. Profiles of Designated Groups

The following statistical and qualitative information is provided to illustrate in a very summary way the extent of the disadvantage suffered by designated group members precisely because they belong to a particular group, and often, to more than one group. It is important to remember that statistics which collectively describe a designated group may hide the different needs, conditions and experiences within the group.

Statistics are used since they show general patterns. While there are always notable exceptions, generally speaking, exclusionary practices affect the group as a whole. Statistics also simplify comparison with other groups. The interpretation of difference is important. Factors such as education, years of experience, job mobility, and conditions of employment can be meaningful indicators of the lack of or limited job opportunity.

Statistics, however, do not give a full picture of disadvantage. They do not speak of the humiliation suffered when a job is denied on a false pretence such as no opening, when in fact the opportunity to apply is given immediately to the next candidate. Statistics do not tell of the gradual loss of respect in the eyes of younger family members. Statistics do not describe the gradual waning of hope and the onset of resignation or fatalism. **Official unemployment rates do not reflect the numbers of workers who are discouraged and have given up looking for work.** These workers are no longer considered to be part of the labour force and do not show up in statistics.

It should be noted, however, that many of the statistics which follow for each of the groups are obtained from different sources, for example from the 1981 and 1986 Census. Comparison will not be appropriate in many cases.

Aboriginal Peoples and Employment

Aboriginal Peoples are significantly under-reported in the 1986 Census, because enumeration for the Census was not permitted by 132 Indian bands. Up to one-third of Ontario's on-reserve Indian population was not enumerated.

According to the 1986 Census, the Aboriginal population including Metis, Non-Status Indians, Status Indians and Inuit, accounts for almost 2% of the provincial population; 70% of Aboriginals are registered Status Indians.

Aboriginal workers, like workers in the other designated groups, are often refused employment because of an extremely limited perception of their knowledge, skills and abilities. The absence of Aboriginal persons in many workplaces and occupations makes it more difficult for Aboriginal candidates to be accepted into those positions; when they are accepted, limited support and the continuous need to prove themselves is discouraging. Other barriers include:

- the lack of cultural accommodation or sensitivity when required;
- the lack of positive role models;
- the lack of opportunities for training and education on the reserves or in rural areas.

Aboriginal Peoples are more often unemployed, earn lower incomes and have less education than the non-Aboriginal population in Ontario. Most Aboriginal workers tend to be concentrated in a narrow range of occupations, including fishing, trapping, logging, clerical, service and construction, where they tend to be found in the lower paying, seasonal or part-time jobs.

- The Aboriginal population is diverse. One-third of the Aboriginal population live in southern Ontario, one-third live in the far north and northwestern regions, and almost one-third live in 7 major urban centres.
- In 1986, Aboriginal Peoples had an unemployment rate of 14.1% compared to 6.7% for the provincial labour force.
- In 1981, over 22% of Aboriginal youth aged 15 to 24 were unemployed compared to 10% of non-Aboriginal youth, and only 35% of Aboriginal youth were able to find jobs, compared to 68% of their non-Aboriginal counterparts.
- Registered Indian women living on reserve experienced an unemployment rate of 18% in 1981 (Ontario Native Affairs Secretariat).
- Aboriginal Peoples earned two-thirds of the income of the non-Aboriginal population in 1981.
- Increased Aboriginal control over their education has proven successful. There has been a 66% increase in university and post-secondary institutions enrolments between 1985/86 and 1989/90. Although Aboriginal Peoples have experienced some increase in representation in professional occupations, they still face discrimination in the workplace. Few Aboriginal Peoples with university degrees are found in the higher income categories compared to the non-Aboriginal population.

NOTE: Data is compiled from Statistics Canada, the Ontario Native Affairs Secretariat, and the Ontario Women's Directorate.

Persons with Disabilities and Employment

Persons with disabilities are generally disenchanted with current employment equity initiatives. Outside certain major institutions, new employment opportunities have generally not been forthcoming.

In 1986, 11.1% of the total provincial population between the working ages of 15 to 64 reported some form of disability (about 691,590 people). Persons with disabilities are out of work twice as often, are concentrated in low-paying, part-time jobs, and have long periods of unemployment, compared with the rest of the population in Ontario. Many have the skills to find successful employment if given the opportunities. Despite this, they are often excluded from the labour force. There are also those who are discouraged from seeking employment. Barriers to employment include:

- stereotypes and misunderstanding about different types of disabilities and capabilities of persons with disabilities;
- staffing policies which do not accurately measure the potential to satisfy requirements of a given job;
- excessive delays in delivering essential job accommodation;
- inaccessibility of the work site, including inadequate systems of transit for those who need it;
- the lack of access to adequate training.

The existence of many of these barriers has been a result of, and has contributed to the historical social isolation faced by persons with disabilities. In 1986:

- The unemployment rate of 13.4% for disabled persons in the labour force was about twice the rate of the total labour force at that time.
- Men with disabilities were more likely to be in the labour force than women with disabilities (60% for men compared with 40% for women).
- Approximately 30% of unemployed persons with disabilities, who reported some limitations at work, stated that they were refused employment because of their condition.

Employability has historically been linked with type and degree of disabilities, and individual personal characteristics. A person who has a double impairment or who is both disabled and female, Aboriginal or a member of a racial minority group, is even less likely to be employed, and is more likely to earn a lower income.

NOTE: The above statistics are drawn from a number of sources including Statistics Canada. Data on persons with disabilities refer to those 15 to 64 years living in households, as identified by the Health and Activity Limitation Survey (HALS), 1986.

Racial Minorities and Employment

For racial minority workers, discrimination is too often overt. Besides the systemic practices which operate to their exclusion, blatant racism is also frequently experienced. Stereotypical views of racial minorities rather than actual skills or performance often influence decisions in hiring and promotion. The effects of limited expectations are becoming more and more evident among the youth of certain racial minority groups who have to a large extent been alienated. Strong measures will be necessary to reduce growing hostility and reverse the vicious cycle of lowered expectation - lowered achievement.

- Racial minorities constitute 8.6 % of the Ontario population, and make up 17.3% of the population of the Toronto CMA (Census Metropolitan Area), which includes the cities of Brampton and Ajax as well as other towns, townships, and villages (1986 Census). The current estimate for Metropolitan Toronto is higher, at 20.5%.

- There are many racial minorities who were born and raised here. As well, sixty percent of newcomers to Canada are racial minorities from Asia, the Caribbean, Africa, and Latin America. For members of racial minority groups who are newcomers, access to language training, and examination and licensing requirements for many occupations and professions, are additional barriers to employment.

- The *Report of the Commission on Equality in Employment* (1984) and the *Report of the Special Committee on Visible Minorities in Canadian Society* (1984) noted that relative to other immigrants, racial minorities experience higher rates of unemployment, earn less money, and are less likely to find work in their chosen fields.

- Henry and Ginzberg's *Who Gets the Work?* (1985) noted that, in Metropolitan Toronto, white job applicants (with matching education and employment histories, age and sex) received a greater proportion of job offers than the racial minority applicants at a ratio of 3:1. In addition, the white job applicants were treated better than their racial minority counterparts.

- The available literature suggests that racial minorities may be concentrated in certain occupational groups. Racial minority women have a tendency to be concentrated in low-skill, low-paying jobs. Billingsley and Muszynski's *No Discrimination Here?* (1985) noted that racial minorities tend to be ghettoized in personal services and in health and welfare organizations, and are significantly under-represented in education, administration, and professional occupational categories.

- Overall, average earnings of members of racial minority group members were 87% of the average earnings of whites in Ontario in 1986.

- At each level of education, racial minorities in Ontario earn less than whites. In 1986, members of racial minorities earned only 74% to 84% of the average earning of whites, even though they had the same level of education.

NOTE: The above statistics are drawn form a number of sources including Statistics Canada.

Women and Employment

For women, clear patterns of historic discrimination and sexism are evident in the study of employment practices. While some women have improved their employment status, large numbers of paid workers are still in traditional and low-paying occupations in manufacturing, service and clerical jobs. Changes in the workplace make it even more important for women to have access to non-traditional occupations. Pay equity addresses the historic imbalances in the evaluation and remuneration of paid work done by women. Employment equity addresses the job concentration or segregation which women and other designated workers face. For programs to be effective, they must remove biases, accept and accommodate the differences between men and women, and they should include positive measures to balance the scales.

According to the 1986 census data, 51.3% of the population (age 15 and over) in Ontario are women. Women constitute about 45% of the paid labour force. The participation rate of men in paid labour force in Ontario was 77.8%, for women it was 61.4%.

It appears that the current participation of women in the paid labour force is almost the same as that for men. While more women are working for pay, the kind of work they do still tends to be lower paying, less secure, and more often part-time, compared with men.

- In 1987, according to Statistics Canada, one quarter (25.3%) of women in the paid labour force were employed part-time and constituted 72% of all the part-time workers in Ontario. Part-time work is more common among younger and older women than among women of child bearing age 25 to 44.

- In 1986, forty-one percent of women in the paid labour force were concentrated in only 10 occupations: secretary, sales clerk, bookkeeper, cashier, nurse, food and beverage server, elementary or kindergarten teacher, office clerk, electronic data processing operator, and receptionist. This contrasts with 21% of men in these same occupations (*Working Life and Unemployment Tables for Males and Females*, Pam Smith, 1988).

- In 1987-88, female students represented only 4.5% of the 43,859 persons enroled in regulated apprenticeship programs. About three-quarters of them were enroled in the "service" area.

- Sixty-two percent of women with children under the age of three in Ontario were in the labour force. Most of them were in full-time jobs (1990).

- In 1986, 15% of families in Ontario were sole support parent families, the majority (82%) of which were headed by women.

Labour market disadvantages are compounded for women who are members of more than one group because of their gender, racial, disability and Aboriginal status. For example, in 1986, women with disabilities earned only about 64% of what non-disabled women earned, while women in general earned 64.5% of what men earned.

NOTE: The above statistics are drawn from a number of sources including Statistics Canada and the Ontario Women's Directorate.

5. Making Progress

Since the 1950's, successive governments in Ontario have attempted to end discrimination in the workplace. The voluntary approach encouraged workplaces to implement affirmative action programs primarily for women. It was not until 1985, as a result of the NDP-Liberal Accord, that the provincial government started to move toward proactive pay equity and employment equity legislation.

In 1988, the Ministry of Citizenship was given responsibility for developing an employment equity strategy for Ontario. In 1989, consultations were held to develop an approach to employment equity for the province. Advocacy groups and organized labour continued to press for mandatory employment equity legislation. Subsequently, the leader of the NDP official opposition introduced *The Employment Equity Act*, 1990, as a Private Member's Bill.

In the Speech from the Throne in November 1990, the new Government of Ontario promised to introduce employment equity legislation.

In March 1991, the Government appointed an Employment Equity Commissioner by Order-In-Council. Her mandate includes holding consultations before an employment equity Bill is introduced.

In December 1990, the Government proclaimed the *Police Services Act* which required police services to develop employment equity plans. In April 1991, the Government passed an employment equity regulation under this Act. This regulation was precedent setting. It not only established strong accountability provisions, but also established the first legislated standards for numerical and qualitative goals and timetables in an employment equity plan in Ontario.

In May 1991, the Government strengthened its own employment equity plan for the Ontario Public Service and allocated additional resources for this purpose.

6. Employment Equity Programs

Both in the province of Ontario and in other jurisdictions, for example, Canada, the United States and Sweden, there are a number of employment equity programs or programs that have an impact on employment. Some of these programs are described below.

6.1. The Province of Ontario

6.1.1 Ontario Public Service

The Ontario Public Service with 90,000 workers is one of the largest workforces in Ontario. It initiated an employment equity program for five designated groups in 1987 and an accelerated program in 1991. The accelerated program has enhanced resources to increase the rate of change for designated groups in the Ontario Public Service. These programs target Aboriginal Peoples, persons with disabilities, Francophones, racial minorities and women. The most developed program has been the Employment Equity program for women. It has been in effect since 1974.

The *French Language Services Act, 1986* requires that government services, in designated areas, be provided in French to the half-million Francophones who live in Ontario. The Act applies to head offices of all ministries, agencies, boards and commissions and to regional offices located in or serving designated areas. The Government continues to be firmly committed to the principles of the Act and to its effective implementation. The Act acknowledges the long-standing contribution of Francophones to the province and wishes to preserve the cultural and linguistic heritage of Francophones for future generations. The Government will continue to respect the rights of Francophones and provide services in French. None of the initiatives under employment equity will affect this commitment.

6.1.2 Ontario Human Rights Commission

The Ontario Human Rights Commission has published guidelines under Section 13 of Ontario's *Human Rights Code, 1981*. Section 13 permits special programs for disadvantaged groups, including employment equity programs.

6.1.3 Broader Public Sector in Ontario

The *Police Services Act* is the first Ontario statute to legislate employment equity. All police forces in Ontario must adopt employment equity programs for four designated groups: Aboriginal Peoples, persons with disabilities, racial minorities and women.

Individual ministries have also implemented their own employment equity initiatives to encourage employment equity planning in the broader public sector or private sector.

Municipality of Metropolitan Toronto
The Equal Employment Opportunity Division of the Municipality facilitates the implementation of policies and programs focusing on opportunities for persons with disabilities, racial minorities and women.

City of Toronto
The City of Toronto has an internal employment equity program for its employees and a municipal contractors program. All contracts, regardless of the value, and all employers, regardless of size, are subject to the program. Aboriginal Peoples, persons with disabilities, racial minorities and women are the four designated groups.

Other municipalities, as well as most hospitals, school boards, colleges and universities, have employment equity plans in various stages of development and implementation.

6.1.4 Private Sector in Ontario

Some leading businesses have developed and implemented employment equity initiatives and have recognized the benefits. Being able to successfully recruit, hire, keeping skilled and motivated workers, and benefitting from higher productivity and lower turnover, are some of the results which employers have pointed out.

6.1.5 Unions

Unions have a strong tradition of protecting and promoting workers' rights in employment. Various unions have made efforts to increase the participation of designated group members within their membership in decision-making positions.

Some unions have successfully bargained employment equity clauses.

6.2 Other Jurisdictions

6.2.1 Canada

Charter of Rights and Freedoms
The *Charter of Rights and Freedoms* recognizes that some groups in society are disadvantaged because of their race, sex, or disability. Section 15(2) permits laws that provide or encourage preferential treatment on a temporary basis so that disadvantage can be overcome. Employment equity legislation is the type of legislation encouraged under section 15(2).

For some groups, special programs, such as those brought into being by employment equity law, are the only ways of breaking the cycle of discrimination and disadvantage.

The Federal Government
Under the *Employment Equity Act*, employers and crown corporations with 100 employees or more and who are regulated under federal law, must adopt employment equity and report on the composition of their workforces. Banks, broadcasting companies and interprovincial transport companies are examples of companies which fall under the federal law. Only the obligation to report the composition of the workforce is enforceable under the legislation. There is no power to impose sanctions for failure to adopt a plan or to implement a plan once adopted. The Canadian Human Rights Commission has, however, initiated joint reviews and systemic complaints against some companies and institutions on the basis of the reports filed under the *Employment Equity Act*. Some group complaints have also been filed. The federal government also has the Federal Contractors Program and the Employment Equity Program in the Public Service.

Aboriginal Peoples, persons with disabilities, visible minorities and women are the designated groups under the Act.

6.2.2 The United States

The American approach focuses in part on affirmative action as a means of promoting equality. The legislative basis for mandatory affirmative action is Title VII of the Civil Rights Act of 1964. Title VII provides basic rights to non-discrimination in employment on the basis of race, colour, religion, sex, or national origin, and applies to employers, employment agencies and labour unions.

The U.S. federal government has developed two distinct approaches for implementing affirmative action programs: contract compliance based on a series of Executive Orders beginning in 1941, and affirmative action under Title VII based on a finding of discrimination. The contract compliance program obliges employers with 50 or more employees and contracts of more than $50,000 with the federal government to develop a written affirmative action plan for the designated groups.

Designated groups are racial minorities, women, veterans and persons with disabilities. The courts have ruled that Native Americans are also covered on the basis of national origin and race.

Employers have had lengthy experiences in complying with affirmative action programs. When under the Reagan administration, the federal government was contemplating reducing compliance requirements for affirmative action, many leading businesses publicly defended the program and stated their commitment.

Separate legislation was recently enacted dealing with, among other issues, employment disadvantage faced by people with disabilities. The omnibus bill, *Americans with Disabilities Act*, 1990, also deals with general access issues. As well, most states have human rights legislation and commissions that have the authority to rule on affirmative action cases.

6.2.3 Sweden

To promote equality, Sweden relies on a framework of integrated policies and legislation such as the *Swedish Work Environment Act*, the *Security of Employment Act*, the *Promotion of Employment Act*, and the *Act on Equality between Men and Women at Work*. The *Swedish Work Environment Act*, although somewhat comparable to Canadian health and safety legislation, is much more comprehensive. It directs that working conditions must be adapted to the individual physical and mental aptitudes of employees performing in a job situation. Although this Act does not designate any one group, it has benefitted persons with disabilities and older workers.

The *Act on Equality between Men and Women at Work* is designated for women. Local labour boards assist employers in recruiting and hiring women, and provide training allowances and regional development grants to employers to hire and train women or men in occupations and areas in which they are under-represented. Employers applying for grants must submit recruitment plans to local employment boards. Employment equity for women is also supported by the *Child Care Leave Act*, which provides for reduced working hours for the care-giving parent, job accommodation during pregnancy, and leave for emergencies and family responsibilities.

6.4 Experiences Drawn From Other Jurisdictions

The different employment equity legislation in other jurisdictions have shown they can produce some results and promote gains. Mandatory programs in the United States have produced some successful outcomes.

In examining employment equity programs, it is clear that the more successful outcomes are the ones with a legislative or contract compliance basis. Voluntary programs have made some contributions to the development of supportive programs for designated group members. However, numerical changes have been limited.

While many studies in Canada have recommended that specific and comprehensive steps be taken to ensure equality in employment, progress has been slow. Public education, skills training, counselling services, special job creation initiatives, voluntary employment equity programs and individual human rights complaints have not resulted in substantial changes.

Good intentions and good-faith efforts have led to some change, but the general pattern remains the same. Groups of people continue to be underemployed, potential continues to be wasted, valuable skills and talents continue to be unrecognized. This reality has led Canadian equality-seeking groups to advocate for stronger legislation and more effective, mandatory enforcement methods.

7. The Present Consultation

The present consultation is an opportunity for public input from across the province, as well as an invitation for technical and expert advice on the implementation and enforcement of employment equity legislation. Formal and informal consultations will permit the Commissioner to benefit from the advice and expertise of members of designated groups, employers, unions, advocacy groups and concerned individuals.

The underlying principles of the consultation are:

- **It will be open and public.**
- **It will be structured to provide focused opportunities for dialogue.**
- **The consultation and all materials will be in English and in French.**
- **It will provide a forum for employers and unions to propose measures and approaches that are practical in the workplace.**
- **It will provide an opportunity for designated groups to discuss their priorities on employment equity.**
- **The consultations with Aboriginal Peoples will be undertaken in the context of Aboriginal self-government. Consultations will be flexible and accessible. Relevant materials will be translated into Ojibway, Cree, & Oji-Cree.**
- **Accommodations, such as barrier-free facilities, print alternatives including audiotape and sign language, will be provided for persons with disabilities as needed.**
- **Part of the kit will also be translated into the majority languages of racial minorities in Ontario, for example: Chinese, Vietnamese, Hindi, Punjabi, Farsi, Arabic, Urdu, Tamil and Somali.**
- **Full participation from representatives of the Francophone communities will be facilitated. Francophones will have the opportunity to express their views.**
- **Youth organizations will be encouraged to use the consultations as a platform for their views on employment equity.**
- **Feedback to those participating will be incorporated into the process.**

Some of the tools to be used in the consultation include:

- Preparation and distribution of a consultation kit, including this discussion paper, to stimulate response.
- Public hearings and community meetings in nine cities.
- A mail survey, telephone and face-to-face interviews, especially designed to facilitate the participation of traditionally hard-to-reach persons.

- Focus group workshops.

- Joint initiatives: The Commissioner has established links with community groups to broaden the process. Examples include production of educational materials in accessible formats, organization of networks throughout the province, and group recommendations and reports to the Commissioner.

8. A Firm Commitment

The Government of Ontario is firmly committed to effectively implementing employment equity. The Government recognizes that employment equity promotes the fundamental right to equality and human dignity. Employment equity respects Canada's obligations under international conventions on eliminating racial and gender discrimination. The need for special programs to overcome disadvantage is recognized by the *Canadian Charter of Rights and Freedoms* as well as *Ontario's Human Rights Code, 1981*.

In moving forward on employment equity, the Government of Ontario has made four major decisions:

- **Employment equity will be legislated: it will be passed as a law by government.**

- **Employment equity will designate four specific groups: Aboriginal Peoples, persons with disabilities, racial minorities and women.**

- **Employment equity will cover three sectors: the public sector including the Ontario Public Service, the broader public sector, and the private sector.**

- **Employment equity will be mandatory: it will be compulsory for employers to comply with the law and an effective way of enforcing the law will be put in place.**

These decisions set the framework for consultation. Advice is now sought on how best to implement these decisions in order to move ahead with employment equity legislation that is practical, effective and fair.

B. Employment Equity Issues for Consultation

The following section raises several key issues for discussion. The Government is seeking information and input on the best methods to implement and enforce employment equity legislation. Recognizing that there is a range of approaches to the issues, the Government has suggested certain approaches for some issues to facilitate discussion at the present time. The final decision on the issues will be made after the completion of the consultation process.

1. Employment Equity Will Be Legislated

The purpose of employment equity is to achieve equitable representation of designated group workers throughout the workplace — in all jobs and at all levels. When historic patterns of discrimination or exclusion change, the workforce should reflect the wide variety of talent and aptitudes in the whole of society. With equitable access to education, training, and job opportunities, and with renewed expectations, all workers should be able to pursue work without the present artificial distinctions between "traditional" and "non-traditional" employment. Job ghettoization based on race, gender or disability should be alleviated as one or more of the underlying causes is addressed.

Employment equity means hiring or promoting qualified or readily qualifiable workers. Goal-setting should consider statistics on the availability of qualified or readily qualifiable workers in the designated groups, and the proportion of designated group members in the working age population in the normal recruitment area. For example, in a region where the proportion of one of the designated groups is small, the goal-setting for that group for most jobs will be determined according to that proportion.

Since employment equity is intended to achieve equitable representation and to eliminate barriers, it broadens the pool of candidates for recruitment and selection. Bias-free testing and selection procedures increase the probability of finding the right person for the job. Job candidates would be evaluated by how their qualifications match the job requirements.

An **employment equity program** usually involves the development,implementation and monitoring of an employment equity plan, as well as initiatives to increase the sensitivity of employers, workers, unions and to foster positive views about employment equity.

1.1 The Employment Equity Plan

Background

To develop an effective employment equity program, it is essential to have a plan. Employment equity planning is results-oriented. It aims to achieve change in the workforce through human resources planning, evaluation and auditing. It is a flexible tool that can be modified to reflect the internal or external changes in the workforce that occur over time. It takes into account opportunities for change within each workplace.

A workforce analysis and an **employment systems review** will both facilitate the development of an employment equity plan. A workforce analysis examines the current situation of all workers in an organization with special reference to designated groups, and is usually based on internal data on occupation level, salary, employment status, age, gender, race, disability status. An employment systems review is intended to identify for removal, both formal and informal employment practices which are discriminatory. This information allows workplaces to set numerical goals and timetables to increase the participation of designated group members.

An employment equity plan usually includes:

- **Numerical goals and timetables** to allow each workplace to identify its planned progress towards employment equity in hiring and promotion, in order to increase participation of designated group members where under-representation and under-utilization exists;

  Plans could emphasize numerical goals and numerical change. This focus on numerical results reduces regulation and monitoring, and simplifies reporting. However, focusing on numerical results would not require identification of how goals are to be achieved and how equity is to be maintained in the workplace.

- **Measures** to increase the participation of designated group members in the workforce (for details on employment equity measures see Section B2) including :

  - **barrier elimination measures**
  - **job accommodation measures**
  - **positive measures**
  - **supportive measures**

- **Education and communications** are key components in any plan. Materials and programs for education and communication can help people understand and accept employment equity in the workplace.

- **Evaluation and accountability** are important parts of an employment equity plan. They help measure progress, and provide for the adjustment of goals and timetables when necessary. Employment equity is more likely to succeed if accountability for the success or failure of employment equity initiatives is clearly established.

Questions For Consultation

- **What should be in an employment equity plan?**
- **Should components be mandatory? If so, which ones?**
- **Should the Commission establish standards for each of the plan's components?**
- **Should plans be submitted to the Commission? If so, why? If not, why not?**

Things to Think About

Proposed employment equity legislation would require workplaces covered by the legislation to develop and implement an employment equity plan. Planning can be integrated into existing human resources planning as well as into corporate strategic planning.

Goal-setting is part of developing an employment equity plan. Four methods of goal setting are possible:

- numerical goals for employers could be determined by the Commission;
- numerical goals for employers could be determined according to standards fixed by the Commission;
- numerical goals for employers could be determined according to guidelines adopted by the Commission;
- numerical goals could be determined by employers.

Numerical goals and timetables take into consideration specific circumstances in each workplace and the availability of designated group candidates. Numerical goals are flexible because they take into account the opportunities for change that arise in a particular workplace. For example, if hiring and promotion opportunities change, the hiring and promotion goals would also change.

Numerical goals and timetables are not the same as quotas. Quotas are usually established externally, and failure to meet them can result in automatic penalties. Similarly, when a quota is met, it is assumed that no further effort is needed. Meeting a numerical goal, however, implies not only that an objective can be reached, but that it can also be surpassed.

Many workplaces are already familiar with goals and timetables in a variety of areas. Goals regarding production, sales, services are typically set. Once these goals are achieved, new goals can be set.

Some goals and timetables can be set according to standards, and some can be set according to guidelines. Standards are mandated requirements which are specific in nature and set out the minimum acceptable course of conduct, which is binding for all parties. Standards have clearly stated criteria which form the basis for accountability and enforcement. An example of a standard would be found in a legislated building code or regulation regarding physical access requirements.

In contrast, **guidelines** are general in scope, and set out a recommended course of conduct. While guidelines usually have criteria attached, their criteria is suggested and cannot be used for purposes other than monitoring because guidelines are voluntary. Because of their mandatory nature, the enforcement of standards can be more uniformly applied than would be the case with guidelines.

Evaluation and accountability mechanisms for all or some of the goals could be mandated by legislation, or could be self-managed by employers with no mandatory requirements.

Evaluation and accountability also raises the issue of whether the plans or the employment equity results achieved should be submitted to the Commission.

The Commission could consider assistance that should be made available to employers. Depending upon the requirements set out in the law, such assistance could include consultative, education and information services.

Possible approaches for the Employment Equity Plan include:

Approach I

The following item will be **mandatory:**

- To establish numerical goals and timetables for hiring and promotion, in order to increase the participation of designated group members in those areas where under-representation and/or under-utilization exists.

    - Numerical goals and timetables will be set according to **guidelines** adopted by the Commission.

Approach II

The following items will be **mandatory:**

- To conduct a workforce analysis and an employment systems review.
- To establish, according to **standards** fixed by the Commission, numerical goals and timetables for hiring and promotion, in order to increase the participation of designated group members in those areas where under-representation and/or under-utilization exists.
- To determine, according to **standards** fixed by the Commission, how to achieve goals for barrier elimination measures, job accommodation measures, positive measures, and supportive measures.
- To establish an evaluation and accountability mechanism.
- To determine educational and communications strategies.

Approach III
(Government's suggested approach for consultation)

The following items will be mandatory:

- **To conduct a workforce analysis and an employment systems review.**
- **To establish, according to standards fixed by the Commission, numerical goals and timetables for hiring and promotion, in order to increase the participation of designated group members in those areas where under-representation and/or under-utilization exists.**
- **To determine, according to guidelines adopted by the Commission, how to achieve goals for barrier elimination measures, job accommodation measures, positive measures, and supportive measures.**
- **To establish an evaluation and accountability mechanism.**

1.2 Collecting and Reporting Data

Background

In business communities, some of the major discussion about employment equity centres around collecting and reporting data. Some businesses are concerned about the amount of paper work in the development of employment equity programs and the incompatibility of reporting requirements under employment equity programs of different government levels. The design of reliable data collection tools is an important element in developing and implementing employment equity. Data collection includes both numerical and qualitative information on a given workplace.

Collecting Data

Collecting numerical and qualitative information allows:

- the assessment of under-representation or under-utilization of the designated groups prior to developing an employment equity plan. This would allow workplaces to set goals and to monitor progress in implementing plans;

- the Commission to monitor the progress in achieving equitable representation. The data must be able to measure change across time, locations, and organizations for evaluation purposes.

- at present, each level of government — federal, provincial, and municipal— defines designated groups differently and classifies occupations, wage groupings and other categories differently. Different employment equity programs also use different methods of collecting information. One may collect workforce data by occupational categories while another uses salary groupings. The federal government uses both. Each method has advantages and disadvantages.

Planning for employment equity requires collecting data in numerical and qualitative terms. Basic numerical data often includes information on hiring, promotion, termination, salaries and occupational categories, in relation to full-time, part-time, temporary and seasonal work. Basic qualitative data describes the quality of systems, processes, and measures. These include:

- employment barriers for designated groups
- initiatives and measures to remove barriers
- economic and other factors specific to the workplaces.

Reporting Data

It will be necessary for the Commission to receive data reports on the workplaces. These reports will show compliance with the proposed legislation and will help the Commission monitor and evaluate progress.

Reports may allow the Commission to monitor changes in employment patterns and to identify general problems workplaces might encounter. Reports could also supply the preliminary data necessary for initiating random or selective audits of workplaces.

Questions for Consultation

- **Should data collection and reporting be standardized and compatible with other jurisdictions?**
- **How should data be collected and reported?**
- **What kind of workforce data should be collected?**
- **How often should data be reported?**
- **How can "paper work" be reduced to a minimum and still allow effective monitoring and evaluation?**
- **What definition(s) do you prefer for the designated group(s)?**

In addition, for designated group members

- **In what way would you prefer to be identified: self-identification, identification by another (supervisor), a combination of both? Based on your preference, what supports should be in place to implement this method?**
- **What is your opinion on the further breakdown of designated groups by sub-categories?**

Things to Think About

To plan, monitor, and evaluate employment equity, the system of collecting and reporting data should be reliable and timely. Data should be accurate and adequate. The system should not place an unreasonable administrative cost and paper burden on the workplace. As well, the right to privacy must be protected.

In developing and implementing data collection and reporting requirements which meet the above criteria, certain issues need to be considered. One issue is whether data requirements should be standardized and compatible with other jurisdictions:

- To compare data across locations, sectors and businesses, the system of collecting and reporting could be **standardized.** Plans and results could be compared over a specific period of time.

  For those workplaces which have to meet federal and/or municipal requirements on data collection and reporting, different requirements from the Commission could also mean an additional burden. Efforts should be made to be as consistent as possible with requirements already in place.

- A **non-standardized** system for collecting and reporting data would be easier for some workplaces, especially those under the federal or municipal employment equity programs. While using the same collecting and reporting requirements of other programs may reduce administrative burden for some workplaces, the information collected and reported could not easily be compared with other data.

  Data collection and reporting systems could be flexible. Workplaces could determine their own systems. The Commission could provide a list of standard systems, some of which are compatible with other jurisdictions. The Commission could also allow workplaces to submit reports prepared for other authorities during the initial period of coverage under the proposed legislation.

Another consideration is how data should be collected and reported. Workplaces can collect and report data in one of three ways. The strengths and weaknesses of each would have to be considered.

- **Self-identification:** Most workers prefer self-identification. This method respects personal privacy. However, some workers do not want to identify themselves according to group membership. They may refuse to be surveyed. The survey would then be incomplete, and would affect numerical goal-setting. If self-identification is required, existing laws dealing with access to personal information and privacy would have to be considered. Members of designated groups should participate in the development of a supportive workplace environment which facilitates self-identification.

- **Other-identification:** Identification by a supervisor or manager is more likely to produce more complete workforce data, but it can lead to an infringement of individual privacy and/or incorrect identification.

- **The combined method of self and other identification:** This combined method would maximize the completion rate of surveys and minimize inaccuracy due to supervisors' incorrect identification. However, some workers might feel pressured to identify themselves as members of designated groups.

Statistics Canada data is based on a self-identification system for designated groups. Statistics Canada has made some attempts to deal with concerns about data collection on some designated groups. It must be noted that Census data are at least two years out of date by the time they are made available. Such a limitation must be noted if Canada Census data are used as a means to establish goals or evaluate progress in employment equity.

Closely related to the issue of identification methods is the extent of breakdown of data within each designated group. Breakdown of data might provide a better understanding about the rate of change. It might also assist the development of meaningful measures to address persistent disadvantage that may be hidden within designated groups. For example, there is evidence that those persons who need significant job accommodations have the most difficult time getting work.

Breakdown of data also enhances sensitivity about the "doubly disadvantaged", for example, Aboriginal women who face systemic barriers to employment because of both gender and Aboriginal status.

An additional consideration is determining the kinds of data that should be collected. Some employment equity programs collect data with occupational classifications. Occupational classifications show how many members of designated groups are represented in various occupations.

The City of Toronto, Employment and Immigration Canada, and other employment equity programs use a system for collecting data called Standard Occupational Classification (SOC), in its modified form. The federal government is in the process of adopting the new National Occupational Classification system (NOC). The NOC system will focus more on skill and educational levels than the SOC system. The 1991 Census data will use both systems.

Two models for collecting workforce data are:

- **An occupational categories model** classifies workers according to occupational types (for example, professionals and clerical) and/or levels (for example, upper-level or middle-level). Classifications could follow the SOC or NOC system. Consistency with SOC or NOC would allow data to be compared to Statistics Canada's data and many labour market studies.

- **A wage bands model** classifies workers according to ranges of wages. These ranges could be consistent with those used under the current federal employment equity legislation. A wage bands model would provide monetary data of broad occupational categories and could to some degree permit the detection of job segregation when it occurs. Furthermore, using wage bands reduces the burden on workplaces for reporting results.

The issue of how often data should be reported also needs to be considered. It is important that the employment equity results of workplaces be provided to the Commission on a regular basis for monitoring and evaluating progress. Reporting requirements need to take into account the resources available to workplaces, as well as the resources available to the Commission for reviewing and analyzing reports.

Results in the workplaces could be submitted annually. Annual reporting appears to be in line with other government reporting. Too long a time gap between reports may delay action to address emerging equity issues.

Results could also be posted in the workplace.

Workplaces of different size could have different reporting requirements. Not all workplaces would be required to report on an ongoing basis. The Commission could request submissions of reports on a selective basis. However, this approach makes it more difficult to establish objective criteria for selection, and to gain an overview of the progress in implementing employment equity in Ontario.

Another issue to be dealt with is how best to reduce the paperwork burden on employers, and still ensure effective monitoring and evaluation.

A certain amount of information is needed for the Employment Equity Commission to monitor the progress of employment equity in Ontario. However, sensitivity to the resources and needs of employers is important. In general:

- Data requirement should be fair and practical. Only the most necessary types of information to ensure effective monitoring and evaluation should be required.

- Flexibility should be built into the reporting requirements and schedules to accommodate the size and types of employers.

Possible approaches for collecting and reporting data include:

Approach I

- The Commission should provide workplaces with a list of data requirements and formats for collecting and reporting, some of which are compatible with other jurisdictions. Workplaces may choose the ones which suit them most.

Approach II

- The Commission should specify the data requirements and standardize the process of collecting and reporting. The Commission should make efforts to ensure that data requirements and processes are compatible with those used by other jurisdictions, and that the paperwork demands on employers are reasonable given the need for effective monitoring and evaluation.

1.3 Workers' Participation in Employment Equity Planning

Employment equity needs the cooperation of everyone in the workplace including employers, unions, workers, designated groups, and employee associations. For employment equity to work, existing partnerships must be strengthened and new links must be forged. When dialogue and commitment to improving the working environment are encouraged and supported, workers and employers benefit. Employers and unions will be challenged to ensure that all workers have a role in the development and successful functioning of the employment equity plan.

Unionized Workplaces

Historically, unions have played an important role in gaining equity in the workplaces. Unions have negotiated improved terms and conditions of work for their members. Aside from securing health and safety measures, many unions have successfully negotiated anti-discrimination clauses in collective agreements. Some unions have already negotiated employment equity clauses. Ongoing work on equity issues has paved the way for current negotiations on employment equity.

Protection of established seniority systems, including those for lay-off and recall, is a fundamental principle of organized labour. The challenge to employers and unions is to develop innovative forms of entry and movement in the workplace to achieve employment equity at all occupational levels. Employment equity and seniority systems can complement each other. Examples of this include: plant-wide seniority, rather than departmental seniority, portable seniority among bargaining units usually with the same employer, constructive seniority where seniority is "built" as a remedy in cases of proven discrimination, and measures to facilitate direct entry into positions above entry level.

Union leadership should acknowledge the role of their members who come from designated groups. Their participation in employment equity planning will be crucial to the success of the program.

Two of the models for union involvement are:

- through the equal partnership of negotiated plans
- consultation with employers

There are several factors to be considered if plans are to be negotiated. Negotiation would ensure that unions are involved in decisions which affect their members. Accountability and responsibilities of management and unions in planning, implementation, and evaluation of employment equity plans, would have to be made clear. Many elements of the employment equity plan will have an impact on collective agreements. Management's right to hire may be affected by employment equity planning. Unions have different levels of resources, membership, and areas of expertise. In workplaces where there is more than one union or where some workers are part of a union and some are not, negotiating a plan that would cover the entire workplace would be complex.

Consultation with employers allows some union input, and places the responsibility for change on employers. However, this limited level of union involvement may reduce the effectiveness of joint planning and implementation of employment equity plans.

There are a few models of a consultative approach that have joint employer-worker committees. Examples include the *Pay Equity Act* and the *Occupational Health and Safety Act*. Although the *Pay Equity Act* does not require the establishment of joint committees, many employers and workers found the establishment of these committees helpful. *The Occupational Health and Safety Act* requires the establishment of a worker-management committee in most workplaces. These committees have legislated powers and responsibilities. How the committees are formed and how they have worked may differ from workplace to workplace. The success of a consultative joint committee would depend on the resources and commitment of management and workers.

A consultative approach may not adequately address barriers or lead to change in situations where hirings are managed by unions, such as hiring halls.

Questions for Consultation

- **Should joint employment equity committees be formed?**
- **What should be the relationship between collective bargaining and employment equity?**
- **How will employment equity planning take place in workplaces with multiple bargaining units?**

- **What kind of mechanism should be in place to respond to a failure to negotiate an employment equity plan?**

Non-Unionized Workplaces

In non-unionized workplaces, workers should be involved in employment equity planning. Joint employer-worker committees could assist worker participation. Depending on the functions of these committees, this would allow employers and workers to exchange ideas and cooperate in the planning, implementation and evaluation of employment equity plans.

Members of designated groups in non-unionized workplaces should be involved in all phases of development and monitoring of employment equity plans. Their insight into the effects of employment practices is indispensable. They could provide advice or training on how to identify barriers, and could participate in monitoring, evaluation and finding corrective actions.

A joint worker-management committee is one method for non-unionized workers to participate in the development of employment equity plans. Several factors need to be considered in the participation of non-unionized workers in the development of employment equity plans. Non-unionized workers do not have the same access to educational and other resources as do unionized workers. Secondly, without the collective strength of a union, some workers in non-unionized workplaces may have little power to effect change despite their representation on the joint management-worker committee. Training and assistance for non-unionized workers and their employers would be needed. The Commission could adopt guidelines for a joint worker-management committee, and could provide advocacy resources for non-unionized workers.

Workplace participation by members of designated groups would be affected by the availability and organization of resources.

Employee Associations in unionized and non-unionized workplaces can help produce an overall employment equity plan which will reflect the interests of all levels of the workplace. Employee associations would have to develop appropriate mechanisms of participation in the workplace.

Questions for Consultation

- **How can non-unionized workers best participate in developing, implementing and monitoring the employment equity plan?**

- **What resources would be needed for non-unionized workers?**

Possible approaches for participation of workers in employment equity planning include:

Approach I

- Employers in unionized workplaces would be fully responsible for the development and implementation of the plan.

- Consultations with unionized and non-unionized workers would be mandatory.

- The Commission would issue guidelines for the consultations and a qualitative description of the consultations would have to be included in employment equity results.

- Any required changes to a collective agreement would have to be negotiated.

Approach II

- In unionized workplaces, the proposed legislation should require employers and unions to negotiate the development of the employment equity plan. Consistent with the proposed legislation, employers would negotiate with the unions in:

a) conducting a workforce analysis and an employment systems review.

b) establishing, according to **standards** fixed by the Commission, numerical goals and timetables for hiring, promotion, in order to increase the participation of designated group members in those areas where under-representation and/or under-utilization exists.

c) determining, according to **standards** fixed by the Commission, how to achieve goals for barrier elimination measures, job accommodation measures, positive measures, supportive measures.

d) establishing an evaluation and accountability mechanism.

e) determining educational and communications strategies.

Approach III
(Government's suggested approach for consultation)

- **In unionized workplaces, the proposed legislation should require employers and unions to negotiate the development of the employment equity plan. Consistent with the proposed legislation, employers would negotiate with the unions in:**

a) conducting a workforce analysis and an employment systems review.

b) establishing, according to standards fixed by the Commission, numerical goals and timetables for hiring, promotion, in order to increase the participation of designated group members in those areas where under-representation and/or under-utilization exists.

c) determining, according to guidelines adopted by the Commission, how to achieve goals for barrier elimination measures, job accommodation measures, positive measures, supportive measures.

d) establishing an evaluation and accountability mechanism.

- Employers and unions would be responsible for implementing and monitoring the plans and they would be accountable for the results achieved, according to their respective roles in the workplace.

- Acquired seniority rights on lay-off and recall would be protected. New forms of entry and movement into and between bargaining units would be negotiated.

- Where the plan is negotiated outside of the collective agreement, a mechanism would be established to allow employers or unions to seek mediation or arbitration of disputes relating to the content of the plan.

- For non-bargaining unit workers in unionized workplaces, employers would be responsible for including their participation in developing the employment equity plans.

- For non-unionized workplaces, employers would be required to develop the employment equity plan after consultation with a joint management-worker committee. Guidelines for the committee would be developed by the Commission.

- Advocacy services for workers would be established within the Commission.

2. Employment Equity Will Cover Four Designated Groups

Four designated groups will be covered by employment equity legislation — Aboriginal Peoples, persons with disabilities, racial minorities and women because these groups face long-standing economic and employment disadvantages.

Current statistics mirror the social history of each group. Serious consideration must be given to past and present employment restrictions when assessing the potential of designated group members and planning remedies. Employment equity has as its objective breaking the cycle of disadvantage and starting a new path towards equality.

The picture of disadvantage is alike in many ways for the designated groups. But there are differences in the experience of disadvantage among the four groups. Individuals in the designated groups also differ in their economic and employment experiences. For some, the challenge is to get into the workforce. For others, the challenge is to overcome limited opportunities for advancement and low wages. Access to training, adequate and fair assessment of prior learning and working experience including recognition of foreign credentials, fair promotion opportunities and policies, are key issues for many designated group members who are unable to participate fully and equally in employment. These diverse needs require diverse responses.

2.1 Employment Equity Measures

Employment equity measures require commitment, administrative time and flexibility in the workplace. Some measures may also require the allocation of funds.

Four types of measures can be included in an employment equity plan:

2.1.1 Barrier Elimination Measures

Under employment equity, measures are designed to end discriminatory barriers. **Barrier elimination measures** are designed to permanently change employment systems and practices. Emphasis is placed on the implementation of proactive policies to remove systemic or intentional barriers to employment, and within the workplace. Barrier elimination is required under Ontario's *Human Rights Code, 1981*. Examples would include:

- barrier-free interviewing to ensure all tests or questions are job-related and free from racial, gender and disability bias; barrier-free selection involving the consideration of equivalent qualifications for jobs where designated group members are under-represented. Giving recognition to volunteer experience, and fairly assessing prior learning and working experience are examples of this.

- policies to eliminate sex, race and disability stereotyping and anti-discrimination policies. Such policies would provide for training managers and sensitizing staff around employment equity issues and establishing internal complaint mechanisms.

2.1.2 Job Accommodation Measures

Job accommodation measures are both for accommodating individual differences and eliminating systemic barriers. Job accommodation is required under Ontario's *Human Rights Code, 1981*. Job accommodation must be provided unless doing so would result in undue hardship. The Ontario Human Rights Commission has issued "Guidelines for Assessing Accommodation Requirements for Persons with Disabilities". In developing job accommodation measures, respect and dignity for persons with disabilities in the workplace are paramount. Job accommodation should be part of a broader, proactive human resources strategy. Examples of job accommodation include: technical aids or devices or the modification of job duties; braille print or readers, visual alarm systems, and shift schedule adjustments, for persons with disabilities who need such accommodation.

Both barrier elimination measures and job accommodation measures should be considered in all aspects of work, including recruitment, selection, promotion, and terms and conditions of employment.

2.1.3 Positive Measures

Positive measures are designed to remedy the effects of past discrimination against members of the designated groups. They are used to increase the hiring and promotion of members of designated groups and speed up the rate of change within the workplace. By increasing the number of designated group members, and creating a critical mass, positive measures foster a chain reaction. The increased presence of designated group members helps to create a more supportive climate. Designated group members are then more likely to remain in the workplace; their presence will attract other members of their group. Positive measures are temporary measures and stop when the workplace achieves equitable representation. Examples may include:

- targeted outreach — external and internal recruiting by advertising job opportunities in newspapers and other media which target designated group member audiences; disseminating recruitment information through community organizations representing designated group members.

- bridging positions — establishing positions which "fast track" career training so that some designated group members can acquire skills and abilities to allow them to compete for positions in which they are under-represented.

- lateral entry — recruiting designated group members in positions with increased responsibilities. These positions can be above the entry level.

These positive measures can be applied in all aspects of the workplace, although emphasis may be needed on apprenticeship and training programs in some workplaces to remedy the effects of past discrimination against members of designated groups in trades and professions.

Union hiring halls and professional associations may also have an important role to play in increasing the access of designated group members to trades and professions and improving their job opportunities.

Hiring halls in the construction industry, for example, were established both to provide a pool of labour to unionized employers and to fairly and equitably distribute available work to union members. Measures to increase entry of designated group members and improve their placement opportunities in hiring halls should be examined.

2.1.4 Supportive Measures

Supportive measures are intended to remove barriers which have a greater impact on designated groups. Such measures also foster a work environment which is beneficial to all employees and generally improve the quality of the workplace. These measures could include:

- implementing policies to permit a balancing of work and family responsibilities such as child care and care of other dependent family members.

- implementing policies on flexible working arrangements.

- implementing mentoring programs; these programs pair a designated group member with a role model in the workplace who can provide support and guidance.

Questions for Consultation

- **What successes and difficulties have you experienced in implementing or benefitting from barrier elimination measures, job accommodation measures, positive measures, supportive measures?**

- **What kinds of educational processes and resources would be required to implement these measures?**

- **What government services in education, employment and training are needed to support employment equity?**

- **How can employment-related services and employment equity initiatives be co-ordinated?**

In addition, for designated group members

- **What are your priorities for:**

  - **barrier elimination measures**
  - **job accommodation measures**
  - **positive measures**
  - **supportive measures**

3. Employment Equity Will Cover Three Sectors

The proposed employment equity legislation will cover three sectors:

- the public sector, including the Ontario Public Service

- the broader public sector, which includes: hospitals, school boards, colleges and universities, municipalities, crown corporations, public authorities such as housing authorities and conservation authorities, as well as organizations providing human services which are wholly or partially funded by the provincial government.

- the private sector.

3.1 Employers Covered by Employment Equity Legislation

Background

Various levels of government in Canada have instituted employment equity programs. The range of employers covered under these programs varies. Not all employers are subject to existing legislation.

The Federal government has an *Employment Equity Act* (1986) and a federal contract compliance program. The *Employment Equity Act* requires employers with 100 or more employees under federal jurisdiction to implement employment equity and report data. The Federal Contractors' Program requires suppliers of goods and services with 100 or more employees and a contract of over $200,000 with the federal government to implement employment equity. No reports are required of contractors.

At the municipal level, the City of Toronto, for example, has a contract compliance program which applies to all recipients of funds. The U.S. federal program applies to employers with 50 or more employees and contracts of $50,000 and more.

Questions for Consultation:

- **Which employers in the public sector, the broader public sector, and the private sector should be covered by the proposed legislation?**
- **Should there be modified requirements for smaller businesses? If so, what should they be?**
- **Should coverage be based on the number of workers (size of employer) or on the size of payroll?**

Things to Think About:

The fundamental principle is that employment equity legislation should benefit as many members of the designated groups as possible. This is the reason why employers in the public sector, the broader public sector, and the private sector should be covered by the proposed legislation.

Should the proposed legislation cover all employers in these three sectors or only larger employers in each sector?

One consideration is the amount of resources and expertise available to employers and unions.

Small businesses play an important role in Ontario's economy. They are a major source of employment and create most new jobs in Ontario. The Government recognizes that they are different from larger businesses and that they do not have the same resources. Employment equity legislation should recognize and respond to these differences. At the same time, small businesses are also obliged to remove systemic barriers to fair employment in the workplace. The proposed legislation could allow for modified requirements for small businesses with 10-49 workers, taking into account their particular situation. Modified requirements could apply to the collection, reporting and maintenance of data. Reporting requirements could be phased-in over a longer period of time. Technical and practical assistance geared to the needs of small businesses could be provided by the Commission.

With over 300,000 businesses currently active in Ontario, another consideration is the amount of resources available to the Commission to monitor compliance with the proposed employment equity legislation. The Commission must have adequate resources to monitor and evaluate the progress of employment equity and to provide technical advice and assistance to employers, workers and members of the designated groups. While administrative convenience cannot be the overriding consideration, a Commission which over-extends itself would be ineffective.

There is a practical need to select the measure for determining employers to be covered by the employment equity legislation. The size of the employer could be decided by using the number of workers or the size of the annual payroll.

Employer Size

Measuring size by the number of workers would provide the Commission with an accurate estimate of the number of workers covered by the legislation. Since the numbers of workers may vary throughout the year, numbers could be identified on a fixed date or by an annual average.

Two observations:

- Out of the 315,000 active businesses in Ontario in 1988, about 12,600 (or 4% of employers) employed more than 50 and more workers each. They employed 3.5 million workers — 71% of Ontario's workers.

- About 600,000 additional workers would be covered by extending coverage to employers with 10 - 49 workers.

More workers would be covered if the proposed legislation applies to employers with 10 and more workers. Many designated group members work for smaller businesses or seek work from these businesses.

Extending coverage to employers with less than 50 workers would greatly increase the number of employers to be monitored by the Commission.

Size of Annual Payroll

Using the size of annual payroll to determine employer coverage would cover businesses with different sizes of workforces. It could be easy for businesses to determine whether or not they are subject to the proposed legislation.

- In 1991, about 90% of businesses in Ontario have an annual payroll size of $400,000 and less.

- About 9% of businesses have an annual payroll size between $400,001 and $10 million.

- Fewer than one percent have an annual payroll size of more than $10 million.

If approximately $28,000 is used as the annual average wage of workers, a business with an annual payroll size of $400,000 would have about 14 full-time workers. A business with an annual payroll of $10 million would have about 357 full-time workers. However, the annual average wage for designated group members may be well below $28,000.

Possible approaches for employers covered by proposed employment equity legislation include:

Approach I

- All public and broader public sector employers, and employers in the private sector with *100 or more* workers would be subject to full coverage. Employers with fewer than 100 workers would be exempted from the proposed legislation.

Approach II

- All public and broader public sector employers, and employers in the private sector with *50 and more* workers would be subject to full coverage. Employers with fewer than 50 workers would be exempted from the proposed legislation.

Approach III

- All public and broader public sector employers, and employers in the private sector with *10 or more* workers would be subject to full coverage. Employers with fewer than 10 workers would be exempted from the proposed legislation.

Approach IV

- All public and broader public sector employers, and employers in the private sector with *50 or more* workers would be subject to full coverage. Employers with *10-49* workers would be covered by the proposed legislation but with modified requirements.

4. Employment Equity Will Be Mandatory

Employment equity will be mandatory for workplaces covered by the proposed legislation. This raises several issues about the nature of monitoring, compliance and enforcement, the timing of compliance and the roles and functions of the future Employment Equity Commission.

4.1 Compliance and Enforcement

Background

Experience with legislated equity programs demonstrates that to achieve meaningful and effective social change there must be incentives to encourage compliance with the legislation, and sanctions or remedies to address non-compliance and specific violations. An effective enforcement framework must also be put in place to monitor compliance and identify and respond to complaints and violations. These three components, incentives, sanctions and enforcement must be administratively efficient, consistently applied and reflect the spirit of the legislation.

There are basically three approaches to monitoring compliance:

- A proactive approach
- A reactive approach
- A combination of both

A proactive approach to compliance and enforcement is one where a commission or enforcement agency takes the initiative for monitoring compliance with legislation. A reactive approach is one where a commission or enforcement agency primarily responds to complaints of non-compliance with the legislation.

Incentives and sanctions could be used with any of the three approaches to ensure compliance with the legislation.

Questions for Consultation

- **What approaches should be taken in enforcing the proposed legislation?**
- **What incentives should be used to encourage compliance with employment equity legislation?**
- **What sanctions and remedies should be used to ensure compliance, or to address specific violations of the legislation?**

Things to Think About

A proactive approach:
Selective and random audits are a means of proactive enforcement for employment equity. They can be used to determine whether or not the plans are in compliance with the proposed legislation, or if the goals set out in the plan have been achieved.

Selective audits could be according to set criteria including the size of employer, geographic location, sector of economy, or research and information gained from compliance problems.

Random audits could be carried out on individual employers across the province, or on employers in a particular geographic area or sector of the economy. Audits could allow for a comparison of performances within a particular area or sector.

An audit approach would allow for a more planned approach to ensuring compliance because the agency responsible for enforcing the legislation would develop the criteria to be applied in selecting employers, could prioritize problem areas for action, and could target resources to match those priorities, thus controlling costs.

A reactive approach:
The legislation could allow individuals or groups to file complaints with the Commission. The basis of these complaints could either be non-compliance with the legislation, or the failure of an employer to achieve the goals contained in the employment equity plan.

A complaints-based approach could ensure that the Commission is alerted to emerging trends and remains attentive to the needs of individuals/groups affected.

However, resources for the agency would need to be matched to the volume of incoming complaints, otherwise a backlog could develop.

A combination of the proactive and reactive framework:
The legislation could combine elements of both the proactive and reactive approaches. Allowing the Commission to undertake selective audits, as well as investigate complaints at its discretion, could maximize monitoring and enforcement. This could combine the advantages of both approaches, while still ensuring that the Commission uses its resources effectively.

Incentives:
In addition to ensuring that reasonable time-lines are established for development and implementation of employment equity plans, and that satisfactory data reporting requirements are instituted, it is also possible to introduce a number of incentives into the employment equity framework to encourage and facilitate compliance.

Some of these incentives could be targeted at assisting employers with compliance. Such measures could include educational, technical and advisory services provided by the Employment Equity Commission. These are discussed later in the paper.

In addition, the Government believes that employment equity is a good business practice and incentives, such as public recognition awards, may be one measure to acknowledge and recognize the contributions made in the area of employment equity. Publicizing innovative positive and supportive measures, or other activities undertaken may be helpful in encouraging other employers to comply with the legislation or to try measures that have been proven to be successful.

The government could also promote compliance through preferential contract awards similar to the contract compliance program in the United States. Compliance could also be considered as a factor in determining eligibility for government grants or financial assistance.

Sanctions and Remedies:
Once employment equity legislation is in place, there will be a need for a combination of remedies and sanctions to ensure that non-compliance with the legislative requirements will be addressed and that specific violations will be subject to appropriate penalties.

Where there are instances of non-compliance by employers, such as in failing to meet reporting or plan implementation deadlines, a range of enforcement measures could be applied by one or more enforcement bodies.

In initial cases of non-compliance the Commission could work with the employer to achieve compliance, mediate and resolve disputes. Specific time limits could be imposed for compliance, and sanctions could be imposed if those time limits were not met.

In other instances, where there were substantial violations or repeated non-compliance, a compliance order could be issued specifying the steps required to be taken. Failure to comply within a stated time would incur sanctions. These sanctions could include fines or the imposition of mandatory remedies such as hiring targets or the implementation of training or recruitment programs. These sanctions would more appropriately be imposed by an administrative tribunal or by the courts.

Other jurisdictions' experiences demonstrate that vigorous enforcement and prosecution of well selected cases have an effect beyond the individual parties involved, and encourage other employers to comply. A definite time-line for the monitoring and enforcement process will be necessary to achieve effective compliance.

Questions for Consultation:

- **What body should ensure compliance and impose remedies? Should a specialized tribunal be established? What procedures should be involved? What powers should the body have? Should the courts have a role?**

Possible approaches to compliance and enforcement include:

Approach I

- Incentives would be provided to facilitate compliance.
- The Commission would only audit those workplaces with complaints filed against them by individual workers, members of designated groups or other interested parties.
- Workplaces would be evaluated based on the adequacy of their plans and whether goals have been achieved, and whether measures put in place to achieve goals are adequate. Standards of evaluation could be contained in a regulation.
- Initially, the Commission would seek to achieve compliance through means other than sanctions. If this approach were unsuccessful, sanctions would be imposed.

Approach II

- Incentives would be provided to facilitate compliance.
- The legislation would establish a proactive mechanism for monitoring compliance. The Commission would undertake random and selective sectoral and/or geographic audits of workplaces to ensure compliance.

- Workplaces would be evaluated based on the adequacy of their plans and whether goals have been achieved, and whether measures put in place to achieve goals are adequate. Standards of evaluation could be contained in a regulation.

- Initially, the Commission would seek to achieve compliance through means other than sanctions. If this approach were unsuccessful, within a set time-limit, sanctions would be imposed.

Approach III

- Incentives would be provided to facilitate compliance.

- The legislation would establish a combined mechanism for monitoring and enforcement. The Commission would undertake selective audits of workplaces to ensure compliance, including sectoral and geographic audits. Selective audits would be based on set criteria, the evaluation of results, and the Commission could have the discretion to investigate complaints filed by individuals or third parties.

- Individuals or third parties could have the right to bring complaints directly to an administrative tribunal.

- Workplaces would be evaluated based on the adequacy of their plans and whether goals have been achieved, and whether measures put in place to achieve goals are adequate. Standards of evaluation could be contained in a regulation.

- The Commission would have the power to issue orders for compliance; failure to comply within a stated time would incur sanctions.

4.2 The Timing of the Proposed Legislation

Background

"Timing" refers to the time-lines within which workplaces will be expected to comply with the requirements of the legislation. These requirements may range from employment systems reviews, workforce analysis, and preparation of employment equity plans, to the submission of results of employment equity plans.

Different time-lines may be set for compliance with different components of employment equity plans. Time-lines could vary according to the size of employer or sector.

There are basically two approaches in determining the length of time required for compliance: a universal compliance approach or a phase-in compliance approach.

- A universal approach requires workplaces covered by the legislation, to begin implementation of employment equity initiatives immediately and to submit their first reports to the Commission by a certain time. No distinctions are made between small and large employers or between public, broader public and private sector employers.

- A phase-in approach considers the type and size of employers. A phase-in approach could allow employers in the public and broader public sectors and those in the private sector with a large number of workers to prepare their employment equity plans by one date, but smaller employers in the private sector to prepare their plans by a later date. Reporting results would also be phased-in.

Questions for Consultation

- **What time-lines should be set for compliance with the proposed legislation?**

- **Should there be a phase-in period?**

Things to Think About

Employment equity will impose new requirements on many workplaces. These workplaces should have enough time to gather the necessary information, prepare the climate in their workplaces, adjust human resources systems and modify collective agreements where necessary.

Some workplaces may need more time than others to prepare and implement employment equity plans. Employer size should be considered in determining time-lines. Many large broader public sector and private sector employers may have experience in planning and implementing employment equity because they are under the federal contractor's program or regulated by laws of other jurisdictions. The public sector and broader public sector may be more experienced in preparing and implementing employment equity plans. The Ontario Public Service is implementing an accelerated strategy in employment equity. Larger municipalities and most hospitals have begun or are well advanced in employment equity planning. However, other large employers may have little or no experience in complying with specific employment equity requirements.

Small employers may not have the resources or capacity to establish data collection and reporting systems, and to develop employment equity plans. Other small businesses may find the requirements relatively easy to comply with since they have a small number of employees.

A phase-in approach could allow employers to have the necessary preparatory time. The phase-in would allow adequate time to develop first plans. However, experience shows that many may put off preparation of the plans if the phase-in period is too long.

Another consideration is the fact that many job opportunities are created by small businesses. To delay the implementation of employment equity in this sector may not benefit members of the designated groups. It may be necessary to have different initial requirements for employers of various sizes and encourage employers or management associations to share and co-ordinate resources.

Possible approaches for the timing of the proposed legislation include:

Approach I

After the passage of the proposed legislation:

- All employers in the three sectors (public, broader public, and private) should be given ONE year for preparing their workforce analysis and employment equity plans.

- All employers covered by the proposed legislation should submit the first results of their employment equity initiatives, both quantitative and qualitative, **ONE** year after the preparation of their plans and every subsequent year.

Approach II

After the passage of the proposed employment equity legislation:

- All employers in the public and broader public sectors and large employers in the private sector with more than 500 workers should have **ONE** year for preparing their workforce analysis and employment equity plans.

- All employers in the private sector with less than 500 workers should have **ONE** year for preparing their workforce analysis, and should have a **SECOND** year to prepare their employment equity plans.

- All employers covered by the proposed legislation should submit the first results of their employment equity initiatives, both quantitative and qualitative, **ONE** year after the preparation of their plans, and every subsequent year.

Approach III

After the passage of the proposed employment equity legislation:

- All employers in the public, broader public and private sectors with more than 500 workers should have **ONE** year for preparing their workforce analysis and employment equity plans.

- All employers in the broader public and private sectors with less than 500 workers should have **ONE** year for preparing their workforce analysis, and should have a **SECOND** year to prepare their employment equity plans.

- All employers covered by the proposed legislation should submit the first results of their employment equity initiatives, both quantitative and qualitative, **ONE** year after the preparation of their plans, and every subsequent year.

4.3 The Future Employment Equity Commission

Background

For employment equity to be successful, there must be an accessible, strong and independent body that will consult, educate, monitor and enforce the employment equity legislation. Its structure should ensure meaningful participation by designated groups, employers, unions, advocacy groups, and interested parties.

Questions for Consultation

The government would like input on these questions:

- **What is an effective structure to implement employment equity?**

- **What kind of relationship should the future Commission have with other equity-related government bodies and initiatives?**

- **How would designated groups, advocacy groups and interested parties participate in the work of the Commission?**

Things to think about

a) Functions of the Future Employment Equity Commission

The primary responsibility of the Commission should be to administer the legislation and to ensure compliance. To this end, the Commission could perform several functions. These could include:

- Consultative, educational and technical services to employers, unions and workers for the development and implementation of employment equity plans.

- Policy development and research on employment equity issues, and on development and implementation of employment equity legislation.

- Monitoring and enforcement functions to review and analyze both quantitative and qualitative progress in the implementation of employment equity, and ensure compliance with legislation.

- Linkages with other agencies to facilitate implementation of the legislation.

The primary role of the Commission should be to focus on administration and enforcement of the legislation, and to see that the legislation is respected both in letter and in spirit. The legislation should receive a broad and liberal interpretation so that its objectives can be realized.

Many employers may not be able to comply with the proposed legislation without receiving advice and assistance from the Commission. More resources could be made available for assisting employers with compliance. Education and enforcement are both important roles for the Commission.

Relationship of the Commission with other Equity-Related Provincial and Federal Government Bodies and Initiatives

There are a number of government ministries and agencies promoting equality issues in employment. At the provincial level these include: the Ontario Native Affairs Secretariat, the Ontario Women's Directorate, the Office for Disability Issues, the Ontario Anti-Racism Secretariat, the Centre for Disability and Work, the Management Board Secretariat, and the Ontario Training Adjustment Board. In addition, government purchasing programs have and can be used to promote fairer employment and more opportunities for designated groups.

There are also agencies and tribunals that monitor and enforce matters related to employment. Some of these are: the Ontario Human Rights Commission, the Pay Equity Commission, the Workers Compensation Board, and the Ontario Labour Relations Board.

Federally, a number of agencies and ministries are involved in employment and equality issues. The Canadian Human Rights Commission, Employment and Immigration Canada, the Department of Indian and Northern Affairs, the Department of Labour, and the Treasury Board, are a few.

- *Education and Training*

  There are government programs that deal with education, training, and private sector enterprise. Some private sector companies and unions have begun education and training programs that target designated groups.

  Good employment equity depends, in part, on government working with employers, unions, workers, and designated groups on effective educational, training and labour adjustment strategies. These strategies should ensure access of members of designated groups to the full range of traditional and non-traditional training, apprenticeship, literacy and educational opportunities, so that the skills and potential of Ontario's workers are fully developed.

  Promoting and monitoring the participation of designated group members in these types of initiatives could be a key priority for the Commission. In this role, the Commission could facilitate the integration of employment equity objectives and initiatives in areas such as skills development and training, education equity, access to apprenticeships, trades and professions by working with the Ontario Training Adjustment Board and other relevant agencies.

- *Other Considerations*

  The Ontario Human Rights Commission has an important anti-discrimination mandate. The relationship between the proposed Commission and the Ontario Human Rights Commission will need to be determined so that there is no unnecessary duplication in the respective mandate or functions of each Commission.

Relationship of the Commission with members of designated groups, advocacy groups and interested parties

It is important that those covered under the proposed legislation, and those seeking advice and assistance on employment equity have access to a responsive Commission. Committed and knowledgeable members of the designated groups, advocacy groups, and interested parties could provide advice to the Commission. They would make the work of the Commission relevant to the needs of each group.

Further discussion on the relationship of the Commission with Aboriginal Peoples in the context of Aboriginal self-government will be necessary.

Possible roles for these partners can include participation in periodic consultations and forums. Such roles may provide some flexibility to participants and the Commission. However, they may also limit input into decision-making. A more structured participation could be facilitated through advisory committees.

b) Administrative Structure of the Commission

The Commission should be independent from Government. It will need access to adequate government resources. The Commission should be accessible to members of designated groups, unions, workers, and employers. It should be efficient and timely in its service delivery and other tasks. It should be cost-effective. These factors are important in deciding the Commission's structure and roles, including enforcement.

One approach could be to establish an independent Commission reporting through a Minister to the Legislature. This Commission could consist of two separate parts: an Employment Equity Office and an Employment Equity Hearings Tribunal. The Hearings Tribunal could have a Chairperson and the Employment Equity Office could have a Director. This structure would be similar to the Pay Equity Commission.

Or, the Employment Equity Commission could have a Chief Commissioner responsible for administering the Act. While the Commission could still report through the Minister to the legislature, an independent tribunal/board could be established under this structure.

The tribunal/board could either be a standing Tribunal with members appointed on a full or part-time basis for a certain number of years, or persons appointed from a panel of names on a rotating basis. The members of the tribunal/board could be representative of employers, workers, and designated groups. The tribunal could hear complaints against employers or unions by individuals, as well as allow appeals from decisions made by the Commission.

Technical advisory committees comprised of employers, unions, designated groups, professionals, and employment equity practitioners to provide the Commission with ongoing advice, could be beneficial. Another consideration is whether there exists a need to establish an office of the employer adviser, an office of the worker adviser, and an advocacy office for designated groups. These offices could provide technical advice and assistance on the legislation to their respective constituencies and act as primary mechanisms in making the Commission accessible.

Possible approach for the future Employment Equity Commission:

- The roles of the Commission could include:

  - Policy development and research

  - Consultative, educational and technical services

  - Compliance and enforcement functions

  - Providing advocacy services

  These roles could be phased-in, beginning with the policy development and research; followed by consultative, educational and technical services; and finally by compliance and enforcement functions.

- The Commission could maintain and develop effective linkages with Government ministries and agencies whose mandates are to promote equality or monitor matters related to employment, or deal with issues specific to designated groups.

- The structure of the Commission could be an independent Commission reporting through a Minister to the Legislature. The Commission could have a Chief Commissioner responsible for administering the Act. An independent tribunal/board could be established.

- An advisory council comprised of members of designated groups could be established.

C. Conclusion

This discussion paper has presented key issues and approaches to a number of issues. Regional consultations will provide forums for individuals, groups and organizations to present their recommendations on effective legislation. The consultation process will provide opportunities to build consensus on approaches wherever possible.

The process for developing employment equity legislation has many steps. At the end of the consultation, a report will be submitted to the Minister of Citizenship outlining the results of consultation and recommendations for employment equity legislation.

At this stage, the Government will examine recommendations and different options available and give instructions for the drafting of the proposed legislation. Once the proposed legislation has been drafted and approved, the Government will introduce a Bill on employment equity in the legislature. This Bill could be reviewed by a standing committee of the legislature prior to receiving third reading. Once the Bill is adopted, it is then presented to the Lieutenant Governor for Royal Assent before becoming law.

As the detailed work of drafting legislation and preparing for implementation gets underway, the advice and guidance of those interested in effective legislation will help the Commissioner complete her work.

For more information on the consultations, phone, write, or FAX:

Office of The Employment Equity Commissioner
102 Bloor Street West
10th Floor
Toronto, Ontario M7A 2R9

Telephone: **(416) 314 7806**
Fax: **(416) 314 7827**

Toll Free: **1-800-668-7608**

D. Glossary of Common Words and Phrases

ABORIGINAL PEOPLES Persons who consider themselves to be a North American Indian, Metis or Inuit. (For the purpose of this discussion paper, this definition, as used by the Ontario Public Service in 1989, is used. It is one of the many definitions currently in use by different organizations and jurisdictions). This group is also referred to as First Nations and Native peoples.

AVAILABILITY DATA Occupational, educational, and demographic statistics. They describe numbers and characteristics of designated groups available to fill specific jobs/occupations.

AVAILABILITY ANALYSIS Examination of the numbers and skills of designated group members in an organization's workforce and in the labour market to determine the number of potential designated group workers who could fill a particular job.

BARRIER ELIMINATION MEASURES Measures designed to permanently change employment systems and practices. Emphasis is placed on the implementation of proactive policies to remove systemic or intentional barriers to employment, and within the workplace. Barrier elimination is required under Ontario's *Human Rights Code, 1981*. Examples would include barrier-free recruitment, interviewing and selection, policies to eliminate sex, race and disability stereotyping and anti-discrimination policies.

BROADER PUBLIC SECTOR Includes: hospitals, school boards, colleges and universities, municipalities, crown corporations, public authorities such as housing authorities and conservation authorities, as well as organizations providing human services which are wholly or partially funded by the provincial government.

CHARTER OF RIGHTS AND FREEDOMS, SECTION 15 This is the section providing for equality before and under the law and for the equal protection and benefit of the law. **SECTION 15(2)** provides for any law, program or activity that intends to ameliorate conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

CONCENTRATION A high and out-of-proportion ratio of designated group workers to other employees in a unit, level, or occupational group.

EMPLOYMENT SYSTEMS REVIEW An employment systems review is intended to identify for removal, both formal and informal employment practices which are discriminatory. This information allows workplaces to set numerical goals and timetables to increase the participation of designated group members.

EQUITABLE REPRESENTATION Representation of designated group members within an organization's workforce closely corresponding to their proportion in the working age population or with their availability pools of qualified personnel in the general population.

GEOGRAPHIC RECRUITMENT AREA The geographic area from which the organization generally recruits its staff. This may vary with the occupation or level of the position.

"GLASS CEILING" SYNDROME Involves invisible barriers to the upward mobility of designated group members into executive and senior management levels.

JOB ACCOMMODATION MEASURES Measures for accommodating individual differences and eliminating systemic barriers. They are designed to end discrimination in the workplace and permanently change employment systems and practices. Job accommodation is required under Ontario's *Human Rights Code, 1981*. Job accommodation must be provided unless doing so would result in undue hardship. In developing job accommodation measures, respect and dignity for persons with disabilities in the workplace are paramount. Examples of job accommodation for persons with disabilities who need such accommodation are technical aids or devices or the modification of job duties, braille print or readers, visual alarm systems, and shift schedule adjustments.

LABOUR FORCE According to Statistics Canada definition, labour force refers to the population 15 years of age and over, excluding institutional residents, who were either employed or unemployed during the week prior to Census enumeration.

The "employed" includes those persons who, during the week prior to enumeration: (a) did any work at all; or (b) were absent from their jobs or businesses because of their own temporary illness or disability, vacation, labour dispute at their place of work, or were absent for other reasons.

The "unemployed" includes those persons who, during the week prior to enumeration: (a) were without work, had actively looked for work in the past four weeks and were available for work; or (b) had been on lay-off for 26 weeks or less and expected to return to their jobs; or (c) had definite arrangements to start a new job in four weeks or less.

NUMERICAL GOALS (NUMERICAL TARGETS) An integral part of the employment equity planning process. Developed by comparing the representation of designated group members in an organization to a number of factors, including the availability of the groups in the external labour market, their proportion in the working age population, and internal opportunities for change.

ONTARIO HUMAN RIGHTS CODE, SPECIAL PROGRAMS Section 13 of the *Code* provides for special programs designed to achieve equal opportunity for disadvantaged persons or groups. These special programs also help to contribute to the removal and reduction of physical and systemic barriers, and they are designed to help designated group members to improve their economic and social status.

PARTICIPATION RATE The percentage of the population 15 years of age and over, participating in the paid workforce.

PAY EQUITY Pay equity addresses one barrier, wage discrimination for one target group - women, and provides for equal pay for work of equal value. Pay equity is already legislated in Ontario for women.

PERSONS WITH DISABILITIES Persons with disabilities are those who, because of long-term or recurring physical or mental conditions, experience difficulties in carrying out the activities of daily living. (For the purpose of this discussion paper, this definition, as used by the Ontario Public Service in 1989, is used. It is one of the many definitions currently in use by different organizations and jurisdictions).

POSITIVE MEASURES Measures designed to remedy the effects of past discrimination against members of the designated groups. They are used to increase the hiring and promotion of members of designated groups and speed up the rate of change within the workplace. Positive measures are temporary measures and stop when the workplace achieves equitable representation. Examples may include:

- targeted outreach — external and internal recruiting by advertising job opportunities in newspapers and other media which target designated group member audiences; disseminating recruitment information through community organizations representing designated group members.

- bridging positions — establishing positions which "fast track" career training so that some designated group members can acquire skills and abilities to allow them to compete for positions in which they are under-represented.

- lateral entry — recruiting designated group members in positions with increased responsibilities. These positions could be above the entry level.

PRIVATE SECTOR This term refers to employers who are not in the public and broader public sectors.

PUBLIC SECTOR This term refers to the provincial government and its agencies, boards, or commissions.

QUOTAS Usually an externally imposed fixed number of designated group members to be hired or promoted in specific jobs or occupations. Quotas are not adjusted periodically; in practice they usually constitute a ceiling for new hiring, promotion or training of designated group members.

RACIAL MINORITIES People who because of their race or colour, are a visible minority in Canada. Racial minorities may include: Black, East Asian, South Asian, South-East Asian, West Asian and Arab. In this discussion paper, the term "racial minority" is not used as a scientific one. It is used as a sociological term indicating ascribed characteristics to certain groups because of their lack of status and power.

STATISTICS CANADA CENSUS DATA The national census provides in-depth statistical data on the socio-economic conditions of the population. It is carried out once every five years. It is now the most extensive source of information on the availability of designated group members.

SUPPORTIVE MEASURES Supportive measures are intended to remove barriers which have a greater impact on designated groups. Such measures also foster a work environment which is beneficial to all employees and generally improve the quality of the workplace. These measures could include:

- implementing policies to permit a balancing of work and family responsibilities such as child care and care of other dependent family members.
- implementing policies on flexible working arrangements.
- implementing mentoring programs; these programs pair a designated group member with a role model in the workplace who can provide support and guidance.

SYSTEMIC DISCRIMINATION Practices and policies (whether intentional or unintentional) that appear neutral but have a relatively higher negative impact on disadvantaged groups and are not reasonable or *bona fide*. In many cases, these may appear to be fairly and equally applied to all job applicants or employees. However, they are discriminatory if they have an adverse impact on one group and are not clearly related to ability to perform a job or actual job requirements.

UNDER-REPRESENTATION Where the participation rate of the designated group in the organization and at occupational types or levels is lower than the external availability rate of the same group. (See also "Equitable Representation")

UNDER-UTILIZATION A disproportionately low ratio of designated group workers to other employees in a unit, level, or occupational group. (see "Concentration")

UNDUE HARDSHIP The general principle under Ontario's *Human Rights Code, 1981* is that all persons must be treated without discrimination so long as they are able to perform the essential duties of their job. This requires reasonable accommodation short of undue hardship to the employer. The Ontario Human Rights Commission has issued guidelines on undue hardship.

The factors which are relevant to a determination of undue hardship include: excessive cost to the employers in accommodating the individuals' needs, lack of external financial assistance to employers, and health and safety requirements.

WAGE BANDS Groupings of workers by different levels of earnings.

WORKFORCE Employees within an organization or enterprise, as opposed to the "labour force" which consists of working age individuals in the general population.

WORKFORCE ANALYSIS Examination of the current situation of all workers in an organization with specific reference to designated groups, usually based on internal data on occupation level, salary, employment status, age, gender, race, disability status.

Some of the above definitions are adapted from Employment and Immigration Canada's "Affirmative Action: Technical Training Manual" (1985)

Appendices

What is Employment Equity

Employment Equity Programs in Ontario

Some Relevant Legislation

Participant Reply Form

WHAT IS EMPLOYMENT EQUITY?

Employment equity means fairness for all working people. Employment equity aims to overcome the discrimination which has kept certain groups from being hired or promoted in the same way as other groups. Employment equity programs remove barriers that prevent fair and equitable hiring, promotion, and training opportunities for all workers.

People from certain groups have been denied equal opportunities in the labour force and on the job. Studies, research, and experience point out that Aboriginal Peoples, persons with disabilities, racial minorities, and women — the designated groups— face barriers in employment that others do not.

Many barriers are systemic. Systemic barriers are practices and policies that look neutral but have a negative effect on members of designated groups and are not related to actual job requirements. An example of a systemic barrier is height and weight requirements in the case of a security guard job when what is needed is strength, agility, and judgment.

Another example of a systemic barrier is employers' use of word-of-mouth hiring as the main or only recruitment practice. They may not intend to discriminate against designated group members. However, this recruitment excludes designated groups from jobs. First, employers may not employ any designated group workers. When they look for a job candidate inside their workplaces, they can't include any designated group workers. Second, designated group members often work at lower level jobs. They won't be considered for management or supervisor jobs. Third, word-of-mouth hiring may not reach designated group workers who don't know anyone to recommend them.

These barriers are not disappearing despite existing laws, some voluntary efforts, and employer compliance with other legislated programs. In the next decade, people from the designated groups will account for most of the new entrants to the labour force. Employers must be ready for this labour force of the future.

Employment equity changes the workplace by identifying and eliminating barriers. Barriers vary from workplace to workplace. Once they have been identified, measures are adopted in an employment equity plan to remove them.

Examples of measures to remove barriers include: fair selection processes, objective job requirements, policies on sexual and racial harassment, language training, job accommodation for persons with disabilities, anti-racism training, policies on parental and educational leave, flexible work arrangements, and improved access to training and apprenticeships, including recognition of cultural and geographic differences.

Employment equity's goal is *equitable representation* throughout the workplace and labour force and fair treatment of members of designated groups. Equitable representation depends on a number of things. These include: the number of designated group members in the working age population in the appropriate geographic area, the number of trained or skilled members of designated groups available or readily available, and opportunities for change in each workplace.

If there are no available workers from a designated group for an employer to hire or if the employer is reducing the workforce, opportunities for change will be fewer and the achievement of employment equity will be slower.

Measurable goals, including numerical goals and timetables, are key parts of employment equity. They are used to plan and measure progress. Numerical goals may change over time as circumstances change in the workplace and labour force. For example, if the education system encourages more women to become engineers, employers can expect to have more job-ready women candidates in this field and increase their goals. Goal setting can include factors that accelerate the rate of change.

To achieve a representative workforce, employers will need timetables. When fair representation is achieved, numerical goals are no longer needed. When setting goals, other workers' rights cannot be disregarded.

Employment equity is a broad process that means changing the way we think about the workplace. Employment equity legislation will affect current policies and practices that bar people unfairly from equal opportunities to be hired, trained, or promoted. Shared information, education, and communication are essential to its success.

Employment equity legislation will provide a solid framework to support changes in Ontario's workplaces. It cannot succeed without public and government support for other measures. For example, equity in education, accessible transportation, access to trades and professions, progressive work and family policies, and pay equity are needed to support employment equity.

Employment Equity Programs in Ontario

Government Employment Equity Programs in Ontario

Following are some of the government employment equity programs and resources in Ontario.

All Employers

Ontario Women's Directorate
Government of Ontario
Suite 200
480 University Avenue
Toronto, Ontario M5G 1V2

(416) 597-4500 (collect calls accepted)
FAX (416) 597-4594
TDD (416) 596-4633

The Consultative Services Branch offers a wide range of programs and services to educators, unions, community organizations and employers to help them develop effective ways to eliminate bias and sex-role stereotyping in education, training and the workplace.

The Directorate develops and delivers workshops, technical guides, audiovisual and print information on the subjects of education, training and workplace equity, occupational integration, gender and racial bias-free systems and balancing work and family responsibilities. A Community Grants Program supports community organizations by funding community-based projects that will help women achieve economic, legal and social equality.

Anti-Racism Secretariat
Ontario Ministry of Citizenship
20th Floor
77 Bloor Street West
Toronto, Ontario M7A 2R9

(416) 326-9702
FAX (416) 326-9725

The Secretariat provides technical advice and assistance to private and public sector employers on policy and program development regarding workplace issues. Issues include employment equity, race relations training, and the establishment of racial-harassment free environments.

Employment and Immigration Canada
Ontario Regional Office
Employment Equity Consulting Services
Suite 705
55 St. Clair Avenue
Toronto, Ontario M4T 1M2

(416) 973-3755
FAX (416) 973-4005

This Department offers information on the federal Employment Equity Act, Federal Contractors Program, and voluntary employment equity. It provides technical advice and assistance, seminars, workshops, newsletters and updates and has a Resource Centre. (The federal Employment Equity Act covers federally regulated employers with 100 or more employees; the Contractors Program covers most federal government contracts of $200,000 or more for employers with 100 or more employees.)

City of Toronto
Equal Opportunity Division
Suite 301
180 Dundas Street West
Toronto, Ontario M5G 1Z8

(416) 392-7855
FAX: (416) 392-0006

The Division manages Equal Opportunity Program for city employees and provides support for departments' goals and timetables. It conducts and commissions research on employment equity related issues, and administers the Institute of Women and Work, literacy programs and human rights management systems. It manages Contract Compliance Program (covers funding of grants and civic agencies and covers all contracts for goods and services), and provides information, technical assistance and advice, and print material.

Broader Public and Public Sector Employers

Workforce Planning and
Employment Equity Branch
Human Resources Secretariat
Government of Ontario
2nd Floor
Frost Building South
7 Queen's Park Crescent
Toronto, Ontario M7A 1Z5

(416) 965-4941
FAX (416) 324-6863

This Branch develops overall workforce policies and programs of the Ontario Public Service. Initiatives include policies and programs related to employment equity, workplace harassment/ discrimination and job accommodation for persons with disabilities in the workplace. It co-ordinates employment equity goals and timetables for provincial government ministries and agencies, and provides training, advice, special funds, consultation, and outreach programs to provincial government ministries and agencies. It also produces guides, directories and other materials.

Centre for Disability and Work
Ontario Ministry of Labour
10th Floor
400 University Avenue
Toronto, Ontario M7A 1T7

(416) 326-7810
TDD (416) 326-7561
FAX (416) 326-6287
1-800-465-5963 (toll free)

The Resource Centre offers information, education, referrals, and resource materials. It promotes employment equity for persons with disabilities by developing strategies in partnership with employers, job seekers, communities, organized labour, educators, health and rehabilitation professionals. It offers consulting services, conferences, workshops, and seminars.

Office for Disability Issues
Ontario Ministry of Citizenship
2nd Floor
700 Bay Street
Toronto, Ontario M5G 2Z6

(416) 326-0111 TDD/Voice
FAX (416) 327-4079
TDD/Voice Toll Free 1-800-387-4456

The Office provides information and referrals on Government of Ontario and other programs of interest to people with disabilities through a province-wide, toll-free telephone service. It conducts broad public education/awareness programs, and ensures disability issues are considered in government policies and programs. Community Action Fund grants assist disabled persons' organizations with specific projects such as needs studies by consumer organizations, community outreach and public awareness. Employment equity projects have priority.

Ontario Human Rights Commission
12th Floor
400 University Avenue
Toronto, Ontario M7A 2R9

(416) 965-6841
FAX (416) 965-3197
Toll free: 1-88-387-9080

The Commission administers and enforces the Ontario Human Rights Code. The Code, in part, bars discrimination on a number of grounds, including employment, services, and vocational associations. The Commission investigates complaints of overt (intentional) and systemic (unintended but detrimental) discrimination. It requires mandatory job accommodation short of undue hardship to the employer, and offers education and training and print guides to the Code. The Commission approves special programs to relieve hardship or economic disadvantage or to achieve equal opportunity.

Race Relations and Policing Unit
Ontario Ministry of the Solicitor General
3rd Floor
2195 Yonge Street
Toronto, Ontario M4S 2B2

(416) 963-1570
FAX (416) 963-1572

This unit is involved in policy development and issues of employment equity for Ontario police forces as required under the *Police Services Act*. It assists the Solicitor General, in consultation with police organizations and community groups, in developing standards, guidelines, support mechanisms to monitor and evaluate police force employment equity plans. It is also involved in the development of job analyses, bias-free testing and selection instruments, and recruitment models.

Employment Equity Program
for School Boards
Human Resources Branch
Ontario Ministry of Education
19th Floor
Mowat Block
900 Bay Street
Toronto, Ontario M7A 1L2

(416) 327-9131
FAX (416) 327-9043

The program manages employment equity program for all Ontario school boards. The ministry goal for women is 50% or more representation by the year 2000 in positions of added responsibility, supervisory officer, principal, and vice-principal in each of the elementary and secondary panels. The 30% or more representation in all other occupational categories remains in effect. The Minister tables an annual report in Legislature on the status of women and employment equity.

Human Resource Development
and Employment Equity Division
of Metropolitan Toronto
Personnel Department
7 King Street East
20th Floor
Toronto, Ontario M5C 1A2

(416) 392-8383
FAX (416) 392-4664

The Department assists departments within Metro with human rights issues and in developing employment equity and pay equity strategies and consults with departments in development of goals and timetables, special initiatives, corporate pilot projects and pay equity plans. It also provides staff support for advisory groups established by the Corporation to assist in equal opportunity programming. Some print resources and advice on implementation provided to employers.

Office of the Employment Equity Commissioner
102 Bloor Street West, Suite 1040
Toronto, Ontario M7A 2R9
(416) 965-4741, FAX (416) 324-6775

Some Relevant Legislation

Charter of Rights and Freedoms

Equality Rights

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative Action Programs

15.(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Other Pertinent Clauses

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Constitution Act, 1981

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Ontario Human Rights Code, 1981

Preamble

AND WHEREAS it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.

Employment

4.(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

Systemic Discrimination

10.(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 16, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, a board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Special Programs

13.(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

Employment Equity Act (1986)

(Government of Canada)

2. The purpose of this Act is to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

The International Bill of Rights: Universal Declaration of Human Rights

(Adopted and proclaimed by the General Assembly of the United Nations 10 December 1948)

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 23(1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

International Covenant on Economic, Social and Cultural Rights

(Adopted by the General Assembly of the United Nations 16 December 1966)

Article 7: ...Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

Convention on the Elimination of All Forms of Discrimination Against Women

(Proclaimed by the General Assembly of the United Nations 18 December 1979)

Article 4(1): Adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

International Covenant on the Elimination of all Forms of Racial Discrimination

(Adopted by the General Assembly of the United Nations 21 December 1965)

Article 1(4): Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

PARTICIPANT REPLY FORM

Name: _____

Organization: _____

Contact Name: _____

Address: _____

Phone/Fax: _____

Brief description of organization (mandate, when established, membership, etc.) _____

_____

_____

A. How do you intend to participate? (Please check any that may apply.)

- ☐ We will prepare and submit a brief.
- ☐ We would like to make an oral presentation.
- ☐ We will submit other materials.
- ☐ Other. (Please describe.) _____

_____

B. What employment equity designated groups will you focus on?

- ☐ Aboriginal Peoples
- ☐ Persons with disabilities
- ☐ Racial minorities
- ☐ Women
- ☐ All
- ☐ None
- ☐ Other

B1. What sectors will you focus on?

- ❒ Private
- ❒ Public
- ❒ Broader Public
- ❒ Organized Labour
- ❒ Unorganized Labour
- ❒ All
- ❒ None

C. What issues will you focus on? (Please rank 1-8 if you choose more than one.)

- ❒ The Employment Equity Plan ___
- ❒ Collecting and Reporting Data ___
- ❒ Workers' Involvement in Employment Equity Planning ___
- ❒ Designated Groups and Measures ___
- ❒ Employers Covered by Employment Equity Legislation ___
- ❒ Compliance and Enforcement ___
- ❒ Timing of the Proposed Legislation ___
- ❒ The Future Employment Equity Commission ___

I would like information in English/French/tape/Cree/Ojibway/other (list) _____

_____

Do you have any communications needs we should know about?
For example, do you need a:

- ❒ Signer
- ❒ Braille / tape / large print
- ❒ Translator (what language(s)) _____

Return to:

Office of the Employment Equity Commissioner
102 Bloor Street West, Suite 1040
Toronto, Ontario
M7A 2R9